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The Sovereignty Dispute Over The Gulf Islands

Abu Musa, Greater and Lesser Tunbs

A Thesis Submitted For The Award of The Degree of Doctor of
Philosophy in Law

BY

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May 1998

To all those who gave their lives for the sake of their country.

To the memory of

Hassan Khamis Al-Houli

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ABSTRACT

This research presents new documents, which have not been discussed, studied or mentioned in any previous study of the dispute between Iran and the UAE on the sovereignty over the islands of Abu Musa, Greater Tunb and Lesser Tunb. The dispute began when Iranian troops occupied the two islands of Tunb Greater and Lesser Tunb on 30 November 1971 by the use of armed force, after a battle with police personnel who had designated by the government of Ras al-Khaimah on the island of Greater Tunb. At the same time, Iranian troops occupied the southern part of the island of Abu Musa in a peaceful fashion, according to the Memorandum of Understanding which was signed by the government of Sharjah, the owner of sovereignty rights over the island.

The occupation was carried out one day before the retreat of the British forces from the Gulf, and at the end of the treaty of protection signed by the rulers of the Trucial States (today known as the UAE) in 1892. It also coincides with the date of the declaration of the foundation of the UAE on 2 December 1971 which was agreed between the rulers of the seven emirates of Abu Dhabi, Dubai, Sharjah, Ras al-Khaimah, Ajman, Umm al-Qaiwain, Fujairah.

Iran built its claims on three arguments. Firstly, that it had evidence to prove its sovereignty over the islands. Secondly, that British maps included the three islands under Iranian sovereignty. And thirdly, that they were strategically important for Iran.

Given to the Iranian arguments which had led to the armed occupation of the islands, we formed a few questions. What was the strength of the Iranian arguments for their acquiring the three islands? To what extent do courts and arbitration accept maps as evidence for territorial sovereignty? What are the legal modes on which Iran

built its acquisition of the islands? Does the use of force by Iran grant sovereignty over the islands of Greater and Lesser Tunb? Who has an historical right to the three islands? And can Iran win sovereignty over the two islands of Greater Tunb and Lesser Tunb according to the doctrine of historical consolidation of title, from its occupation of the islands on November 1971 until the present? Which party had the greater exercise of sovereignty over the three islands?

To answer these questions, I have arranged the thesis into ten chapters and appendices. Chapter one is an introduction to the research stating its significance, its aims, methods of research and the problems faced the researcher in collecting information and structuring the thesis. Chapter two sheds light on the historic stages of the emergence of the territory of the UAE, especially on the territories controlled by the Qawasim, the rulers of Sharjah and Ras al-Khaimah, because of their relations with the islands. The legal status of these two Emirates is also discussed before the foundation of the unified state, according to their signature of treaties with the British government, the last of which was in 1892.

Chapter three defines the three islands geographically. It also reviews the historic background of the dispute. Chapter four discusses the modes of acquiring a territory according to international law and the legal arguments on which Iran had built her armed occupation of the islands. The same discussion is made on the legal arguments on which the UAE built its claim for sovereignty over the islands. Chapter five analyses the legal arguments on which Iran built its claim and the legal validity of these arguments. Chapter six is a study of the maps and their legal worth, to assess the legal worth of the Iranian argument concerning the recognition by the British map of 1886 of Iranian sovereignty over the three islands.

Chapter seven considers the critical date on which the dispute between Iran and UAE over the three islands was crystallized. Chapter eight reviews the forms of the practice of the governments of Sharjah and Ras al-Khaimah of sovereignty over the three islands, and the recognition of Iran and other countries that the three islands were under UAE sovereignty. Chapter nine discusses peaceful means for settling disputes and the possibilities of settling the dispute of Iran and UAE over the three islands peacefully. The final chapter is the general conclusion and results which were reached by the research.

CONTENTS

Acknowledgments *iii*

Abstract *v*

List of Cases.....*xiv*

List of Documents.....*xvi*

List of Maps.....*xviii*

Abbreviations..... *xix*

CHAPTER ONE

Introduction*1*

1.1. Aims of the study.....*2*

1.2. Significance of the study.....*3*

1.3. Previous studies.....*3*

1.4. Study methods*4*

 1.4.1. IN THE UAE*4*

 1.4.2. IN IRAN*6*

 1.4.3. IN THE UNITED KINGDOM.....*6*

1.5. Research problems*8*

1.6. Structure of the thesis*9*

CHAPTER TWO

Emergence of the UAE *12*

2.1. Introduction *12*

2.2. Geographical description of the UAE *13*

2.3. The history of the emergence of the UAE’s territory *13*

 2.3.1. PORTUGUESE OCCUPATION OF THE GULF REGION*14*

 2.3.2. IRAN’S OCCUPATION OF PART OF RAS AL-KHAIMAH*15*

 2.3.3. YA’RUBA REGAIN THE OCCUPIED TERRITORIES.....*17*

 2.3.4. QAWASIM INHERIT YA’RUBA DOMINANCE IN THE GULF REGION*19*

 2.3.5. BRITISH CONTROL OF THE GULF REGION.....*22*

 2.3.5.1. *Treaty of 1806* *24*

 2.3.5.2. *The Preliminary Treaty and the General Treaty of 1820*..... *25*

2.3.5.3. Exclusive Agreement of 1892	27
2.4. Legal status of the UAE territory before independence	28
2.5. Conclusion.....	31

CHAPTER THREE

Definition of the Dispute over the Three Islands	33
3.1. Introduction.....	33
3.2. Geographical description of the three islands	33
3.2.1. ABU MUSA ISLAND.....	33
3.2.2. GREATER TUNB ISLAND.....	35
3.2.3. LESSER TUNB ISLAND.....	36
3.3. History of the three islands.....	37
3.3.1. EARLY HISTORY.....	37
3.3.2. HISTORY OF THE THREE ISLANDS PRIOR TO 1887	39
3.3.3. THE EARLY BEGINNING OF THE DISPUTE IN 1887	41
3.3.4. TEMPORARY IRANIAN OCCUPATION OF ABU MUSA AND GREATER TUNB ISLANDS IN 1904	43
3.3.5. FROM 1912 TO 1948.....	46
3.3.6. FROM 1948 TO 1968.....	51
3.3.7. THE BRITISH WITHDRAWAL FROM THE GULF.....	53
3.3.8. DEVELOPMENT OF THE DISPUTE OVER THE THREE ISLANDS AFTER 1979	58
3.3.9. IRAN’S BREACH OF THE MEMORANDUM OF UNDERSTANDING.....	60
3.4. Conclusion.....	63

CHAPTER FOUR

The Acquisition of Sovereignty over the Three Islands in International Law.....	65
4.1. Introduction.....	65
4.2. Some relevant modes for the acquisition of territorial sovereignty	65
4.2.1. OCCUPATION	67
4.2.2. CESSION	76
4.2.3. ACQUISITIVE PRESCRIPTION.....	81
4.2.4. CONQUEST.....	98
4.3. The legality of the use of force in the acquisition of a territory.....	99

4.3.1. LEGAL DEVELOPMENT OF THE PROHIBITION OF THE USE OF FORCE99

4.3.2. NON-RECOGNITION OF ACQUISITION OF TERRITORY BY THE THREAT OR USE OF FORCE 107

4.4. *Historical consolidation of title* 111

4.5. *The legality of methods of the disputing parties to the acquisition of sovereignty over the three islands*..... 116

4.5.1. THE LEGALITY OF THE IRANIAN OCCUPATION OF THE THREE ISLANDS 116

4.5.2. THE UAE IS THE RIGHTFUL SOVEREIGN OF THE THREE ISLANDS 120

4.6. *Conclusion*..... 121

CHAPTER FIVE

Analysis of the Iranian Claim of Sovereignty over the Three Islands 123

5.1. *Introduction*..... 123

5.2. *The merits of Iran’s claim to the three islands*..... 123

5.2.1. HISTORICAL RIGHT OF OWNERSHIP 124

5.2.2. BRITISH MAPS AS RECOGNITION OF IRANIAN SOVEREIGNTY 128

5.2.3. THE STRATEGIC VALUE TO IRAN OF THE THREE ISLANDS 129

5.3. *The refutation of the Iranian arguments*..... 131

5.3.1. THE WEAKNESS OF THE IRANIAN HISTORICAL ARGUMENT 132

5.3.2. STRATEGIC VALUE OF THE ISLANDS DOES NOT AWARD SOVEREIGNTY 139

5.4. *Conclusions*..... 142

CHAPTER SIX

Maps as Evidence of Territorial Sovereignty in International Law.... 144

6.1. *Introduction*..... 144

6.2. *The definition and classification of maps in international law* 144

6.3. *The criteria of probative value of maps in international law*..... 146

6.3.1. THE TECHNICAL QUALITIES OF MAPS 146

6.3.2. COMPATIBILITY OF MAPS WITH REALITY AND THEIR SOURCES 147

6.4. *The probative value of official maps in international law* 152

6.4.1. MAPS ANNEXED TO TERRITORIAL TREATIES..... 152

6.4.2. MAPS PUBLISHED BY GOVERNMENTS..... 157

6.5. The map of 1886 as evidence to allocate sovereignty over the three islands.....

159

6.5.1. THE TECHNICAL QUALITIES, REALITY AND SOURCES OF THE MAP OF 1886

160

6.5.2. THE PROBATIVE FORCE OF THE MAP OF 1886.....

161

6.6. Conclusion.....

162

CHAPTER SEVEN

The Selection of the Critical Date of a Dispute

165

7.1. Introduction.....

165

7.2. The concept of the critical date.....

165

7.3. The date on which the dispute crystallized.....

169

7.4. The extent of courts’ acceptance of actions subsequent to the critical date.....

171

7.5. The date of the crystallization of the dispute over the three islands

177

7.5.1. THE DATE OF THE CRYSTALLIZATION OF THE DISPUTE OVER ABU MUSA ISLAND

180

7.5.2. THE DATE OF THE CRYSTALLIZATION OF THE DISPUTE OVER TUNBS ISLANDS

180

7.6. Conclusion.....

180

CHAPTER EIGHT

The UAE Exercise of Sovereignty over the Three Islands

182

8.1. Introduction

182

8.2. Types of material adduced as evidence of territorial sovereignty

183

8.3. The exercise of sovereignty by the Sharjah government over Abu Musa island

189

8.3.1. FLAG HOISTING

189

8.3.2. ISSUING PASSPORTS FOR THE RESIDENTS

190

8.3.3. ESTABLISHING PUBLIC SERVICES

191

8.3.3.1. Schools

191

8.3.3.2. Public health

191

8.3.3.3. Police station.....

191

8.3.3.4. The supply of Electricity and Water

192

8.3.4. FINANCIAL SUBSIDIES OF THE ISLAND

193

8.3.4.1. Paying the salaries of employees

193

8.3.4.2. Supporting the residents financially.....

193

8.3.5. COLLECTING FEES AND INLAND REVENUE.....	194
8.3.6. SEEKING VISAS (PERMISSIONS) FOR VISITING OR LEAVING THE ISLAND.....	195
8.3.7. STOPPING ANY ACTS OF A FOREIGN COUNTRY OVER THE ISLAND OR TERRITORIAL WATERS	195
8.3.8. SIGNING OF CONTRACTS GRANTING CONCESSIONS OVER THE ISLAND OF ABU MUSA.....	197
8.3.9. ADMINISTRATION OF JUSTICE IN THE ISLAND	198
8.4. The exercise of sovereignty by the Ras al-Khaimah government over the Greater and Lesser Tunb islands	199
8.4.1. FLAG HOISTING	200
8.4.2. ISSUING PASSPORTS FOR THE RESIDENTS	200
8.4.3. ESTABLISHING PUBLIC SERVICES	201
8.4.3.1. School.....	201
8.4.3.2 Police station.....	202
8.4.3.3. The supply of Electricity and Water	202
8.4.3.4. Health services	202
8.4.4. FINANCIAL SUBSIDIES OF THE ISLANDS	203
8.4.5. COLLECTING FEES AND INLAND REVENUE.....	203
8.4.6. SEEKING VISAS (PERMISSIONS) FOR VISITING THE ISLANDS	204
8.4.7. STOPPING ANY ACTS OF A FOREIGN COUNTRY OVER THE ISLANDS	206
8.4.8. SIGNING OF CONTRACTS GRANTING CONCESSIONS OVER THE ISLANDS AND THEIR TERRITORIAL WATERS	207
8.4.9. ADMINISTRATION OF JUSTICE IN THE ISLAND	209
8.5. Allegiance of the inhabitant's of the islands to the Sharjah and Ras al-Khaimah governments	212
8.6. The third-party recognition of the Sharjah and Ras al-Khaimah governments sovereignty over the three islands.....	214
8.7. Iran acquiesces and recognizes the sovereignty of Sharjah and Ras al- Khaimah governments over the three islands.....	216
8.7.1. THE ACCEPTANCE OF THE IRANIAN GOVERNMENT TO LEASING OF THE ISLAND OF GREATER TUNB.	217
8.7.2. THE RECOGNITION OF THE IRANIAN GOVERNMENT THAT THE INHABITANTS OF THE ISLAND OF ABU MUSA WERE NATIONALS OF THE GOVERNMENT OF SHARJAH	217
8.7.3. THE RECOGNITION BY IRANIAN FORMAL BODIES THAT THE THREE ISLANDS ARE NOT UNDER IRANIAN SOVEREIGNTY	219
8.8. Conclusion.....	220

CHAPTER NINE

Possible Means of the UAE to Achieve Pacific Settlement of the Dispute 222

9.1. Introduction..... 222

9.2. The UAE presenting the dispute to the Security Council for a settlement..... 223

9.3.. Abu Dhabi negotiations in 1992 between the UAE and Iran 226

9.4. Good offices of the State of Qatar for dispute settlement..... 227

9.5. Separate opinion of view on the settlement of the dispute over the three islands..... 230

9.6. Conclusion..... 237

CHAPTER TEN

Concluding Observations 238

Bibliography.....245

Appendices.....258

Appendix A: Documents 259

Appendix B: Maps 295

LIST OF CASES

Anglo-Norwegian Fisheries, (UK & Norway), ICJ Rep., (1951), P.116.

Argentine and Chile Frontier, ILR, Vol.38, P.10.

British Guiana-Brazil Boundary Award, (1904), BFSP, Vol.99, (1905-6), P.930

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Grisbadarna Arbitration, (Norway & Sweden), AJIL, Vol.4, (1910), P.226.

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Territorial Dispute, (Libyan Arab Jamahiriya & Chad), ICJ Rep., (1994), P.6. Also, ILR, Vol.100, P.1.

Western Sahara, ICJ Rep., (1975), P.12.

LIST OF DOCUMENTS

- Document 1:** Passport No.4792 issued on 15/8/1967 to Mr. Assad Fudel Abdullah from the resident of Abu Musa Island259
- Document 2:** To Whom It May Concern, Letter dated 1/11/1975 from Sharjah Finance Department about the salary of the head teacher Mr. Mahmud Ebraheem Al-Hamarnah in Abu Musa Island262
- Document 3:** Decree from Saqar bin Sultan Al-Qasimi, Ruler of Sharjah and Dependence on 20/4/1964.....264
- Document 4:** Letter from Haji Abu al-Kasem Residency Agents in Sharjah to British Political Resident in the Persian Gulf, dated 24/11/1882.....265
- Document 5:** Passport No.5843 issued on 18/2/1964 to Mr. Mohamed Hasan Abdulla from the resident of Greater Tunb Island267
- Document 6:** Letter dated 28/10/1935 from Shaikh Sultan bin Salem, Ruler of Ras al-Khaimah, to E.H.O. Elkington, General Manager for D'Arcy Exploration Company Ltd.,.....269
- Document 7:** Letter dated 2/11/1935 from Shaikh Sultan bin Salem, Ruler of Ras al-Khaimah, to Mr. Elkington, General Manager Exploration Co., Ltd..271
- Document 8:** Letter dated 13/11/1935 from E.H.O. Elkington, General Manager for Anglo-Iranian Oil Company Ltd., to the Political Resident in the Gulf, Bushire273
- Document 9:** Letter dated 13/11/1935 from E.H.O. Elkington, General Manager for Anglo-Iranian Oil Company Ltd., Abadan Branch to the Main Office in London274
- Document 10:** Letter dated 16/11/1935 from Lieut-Colonel, Political Resident in the Gulf, Bushire, to General Manager for Anglo-Iranian Oil Company Ltd., Abadan Branch.....275

Document 11: Letter dated 2/12/1935 from E.H.O. Elkington, General Manager For D’Arcy Exploration Company, Ltd., to Shaikh Sultan bin Salem, Ruler of Ras al-Khaimah.....276

Document 12: Application form dated 2/11/1967. sign by Mr. Yousif Ebraheem Yousif from resident of Greater Tunb to getting passport from Ras al-Khaimah government.....277

Document 13: Passport No.1897 issued on 14/7/1965 to Mr. Mohamed Ali Mohamed from the resident of Greater Tunb Island.279

Document 14: Passport No.4792 issued on 22/2/1967 to Mr. Mohamed Mahmoud from the resident of Greater Tunb Island.281

Document 15: Passport No.4794 issued on 22/2/1967 to Mr. Mohamed Ali from the resident of Greater Tunb Island.....283

Document 16: Passport No.14519 issued on 9/8/1971 to Mr. Salim Obaid Salim from the resident of Abu Musa Island.....286

Document 17: Letter dated 19/9/1954 from Anglo-Iranian Oil Company Ltd., to the Ministry of Finance, Attention: Minister of Finance and National Iranian Oil Company, about the islands in the Gulf under Iranian sovereignty288

Document 18: Letter dated 26/8/1996 from the Permanent Representative of the UAE to the UN addressed to the President of the Security Council294

LIST OF MAPS

Map 1: Islands of Conflict in the World295

Map 2: The UAE and its Neighbour.....296

Map 3: The Three Disputed Islands Abu Musa, Greater and Lesser Tunbs297

Map 4: Persia 1886298

Map 5: Persia 1876299

ABBREVIATIONS

ABND	Arabian Boundaries: New Documents
ABPD	Arabian Boundaries: Primary Documents
AJIL	American Journal of International Law
BFSP	British and Foreign State Papers
BP	British Petroleum
BTB	Boundary and Territory Briefing
BYbIL	British Yearbook of International Law
CLJ	Cambridge Law Journal
CTS	Consolidated Treaty Series
EPIL	Encyclopedia of Public International Law
FO	Public Record Office, Foreign Office Files
ICJ Pleadings	International Court of Justice-Pleadings, Oral Arguments, Documents
ICJ Rep.	International Court of Justice-Reports of Judgments, Advisory Opinions and Orders
ICLQ	International and Comparative Law Quarterly
IJIA	Iranian Journal of International Affairs
ILM	International Legal Materials
ILR	International Law Reports
IMBG	Islands and Maritime Boundaries of the Gulf
IOR	India Office Records
LNTS	League of Nations Treaty Series
LQR	Law Quarterly Review
MEI	Middle East International
MEJ	Middle East Journal
MEP	Middle East Policy
MEQ	Middle East Quarterly
NCJInt’IL&Com. Rec.	North Carolina Journal of Internal Law & Commercial Regulation
NYbIL	Netherlands Yearbook of International Law
OGLTR	Oil & Gas Law and Taxation Review

PCIJ	Permanent Court of International Justice
Recueil des cours	Recueil des cours de l'Academie de Droit International
Revue Egyptienne	Revue Egyptienne de Droit International
RIAA	UN Reports of International Arbitral Awards
SCOR	Security Council Official Records
UAE	United Arab Emirates
UKTS	United Kingdom Treaty Series
UN	United Nations
YbILC	Yearbook of the International Law Commission
YbUN	Yearbook of the United Nations

CHAPTER ONE

Introduction

The dispute over the sovereignty of a territory is one of the causes for disturbance in friendly relations between states in international life. If such a dispute were not to be settled by peaceful means this could lead to a military confrontation between the disputing parties. The present reality is that there are many disputes between states over territories which are not solved nor have they been referred to an international court, because the disputing parties refuse to solve them by peaceful means. Since the question of sovereignty over territories is related to the dignity of states, a state may fear to lose the disputed territory if the case were to be referred to the court. While a state is able to hold on to the territory, it remains the more powerful party.

It is no exaggeration to say that most regional disputes between states are over the sovereignty of islands or rocks.¹ One such dispute is that over the sovereignty of the islands of Abu Musa, Greater Tunb and Lesser Tunb in the Arabian/Persian Gulf,² between Iran and the UAE.

On 30 November, 1971, two days before the proclamation of the United Arab Emirates as a new State, consisting of the Emirates of Abu Dhabi, Dubai, Sharjah, Ras al-Khaimah, Fujairah, Ajman and Umm al-Qawain, Iranian troops occupied the three islands of Abu Musa, Greater Tunb and Lesser Tunb.

The northern part of Abu Musa island was occupied on 29 November 1971 by Iran under an agreement (Memorandum of Understanding) reached by the government of Iran and the ruler of Sharjah, who had held sovereignty over the

¹ - See Appendix B, Map 1, P.295.

² There is a dispute between Iran and the Arabian states regarding the name of the Gulf; for more details refer to S. H. Amin, *International and Legal Problems of the Gulf*, (1981), P.31. Also, M. R. Al-Fil, *al-Ahmih al-Istratijih Ll-Khaleej al-Arabi (Strategic Importance of the Arabian Gulf)*, (1988), P.45. Also, K. Qalachi, *al-Khaleej al-Arabi (Arabian Gulf)*, (1992), P.7.

island. The other two islands Greater Tunb and Lesser Tunb were occupied by the use of force after an attempt at negotiating their peaceful transfer from the ruler of Ras al-Khaimah, under whose jurisdiction they fell, had failed.

Arguments used by Iran were :

that the islands had been owned by Iran before they were occupied by Britain 150 years earlier, “on the assumption that they were essential to combat piracy” in the Gulf; that Britain had “in pursuit of its imperial interests” considered the islands as belonging to the Arab Shaikhs of the Trucial States and had transferred them to the *de facto* administration of Sharjah and Ras al-Khaimah when Iran was “politically weak”; and that the islands had been shown in Iranian colours on a map which had been issued by the British Intelligence Section of the Ministry of Defence in 1886, a copy of which had been presented to the Shah of Iran in 1888.³

1.1. Aim of the study

The aim of this research is to study the sovereignty dispute between Iran and the United Arab Emirates over the three islands as a case, especially from the perspective of International Law. The main stress will be an attempt to answer the following questions:

What is the strength of Iran’s arguments for its acquiring the three islands? To what extent do courts and arbitration accept maps as evidence for territorial sovereignty? What are the legal modes on which Iran built its acquisition of the islands? Does the use of force by Iran grant her sovereignty over the islands of Greater and Lesser Tunb? Who has an historical right to the three islands? Can Iran win sovereignty over the two islands of Greater Tunb and Lesser Tunb according to

³ - See Chapter 5, P.123.

the doctrine of historical consolidation of title, from its occupation of the islands on November 1971 until the present? Which party had the greater exercise of sovereignty over the three islands?

1.2. Significance of the study

The significance of the present study is mainly in presenting new documents which prove the practice and possession of the UAE's sovereignty over the three islands Abu Musa, Greater Tunb and Lesser Tunb. These documents have not been discussed or referred to in previous studies and articles on the dispute over the islands. Such a situation motivated me to present a new documentation of the acts of sovereignty practised by the UAE, and also to present new information to researchers interested in this dispute. This is the first academic study towards fulfillment of an academic degree in the UK to discuss the dispute of sovereignty over the three islands between the UAE and Iran, from a legal point of view.

1.3. Previous studies

As mentioned, there has been no legal academic study of the dispute from the UAE point of view in the UK, whereas outside the British Isles the question has been studied. Defending the Iranian point of view, Professor G. Mirfendereski, completed his Ph.D. on "The Tunb islands controversy" in 1985, at the Fletcher School of Law and Diplomacy, Tufts University in the United States of America.

Other than this, the dispute has been studied from a human behavioural point of view in a Master's Degree on "The Merits of Iran's Claim to the Islands of Abu Musa and Tunbs" by M. Al-Mahmoud in 1983, at the School of Human Behaviour, United States International University, and by S.D.G. Alexander, who completed his Master of Arts in International Affairs on "Factors in The Settlement of The Dispute

over Abu Musa and The Tombs” in 1979, at the Faculty of the School of International Service of the American University.

Furthermore, in 1992 Mr. A. Abdul received a Master’s degree in Arabic at the Faculty of Legal, Economic and Social Sciences at the University of Mohamed V in Morocco; in his paper he discussed the dispute from the UAE point of view. His study which concentrated on “The Three Arab Islands in the Gulf: Extent of the Validity of Regional Changes Resulting from the Use of Force”, was later published in a book with the same title. Also Mr. Abdullah Mohamed Said Al-Suwaidi, in 1984 made a brief study of the dispute from a political point of view in his studies for a B.Sc. in political sciences at the Faculty of Administrative and Political Sciences, the University of the UAE.

1.4. Study methods

Since the study concerns a dispute between two states, especial care had to be taken in searching for information which would present the point of view of each disputing party, and evidence of sovereignty over the three islands for both parties. Thus, I had to collect information from both Iran and the UAE, as well as in the UK where there are many documents relating to the region of the Gulf and the dispute over the three islands, especially from its entry to the region until its exit in 1971.

1.4.1. In the UAE

I began by reading Arabic books and articles to know the background of the conflict over the three islands between Iran and the UAE from all aspects, geographic, historic, political and legal. I was a regular visitor of the library of the University of the UAE, public libraries in Sharjah, Ras al-Khaimah and Abu Dhabi as well as the Archive of the *Al-Khaleej* newspaper in Sharjah.

These readings motivated me to meet some of those who wrote books or articles on the conflict over the three islands, such as Dr. Al-Roken, Mr. Al-Tadmori and Mr. Abdoul. My aim was to discuss with them and to understand their points of view, the conclusion they reached and the points which they did not research in depth and thus which are in need of a detailed study e.g. the exercise of sovereignty by the governments of Sharjah and Ras al-Khaimah over the three islands.

After understanding the background of the dispute, I started searching in the most important point, on which the research is based, namely the acts of sovereignty practiced by the governments of Sharjah and Ras al-Khaimah over the three islands. I visited governmental departments in both of the emirates of Sharjah and Ras al-Khaimah which offered services to the islands, such as health, electricity and water power, education, and police. I interviewed the employees and heads of these departments to know from them the kinds of services that were offered in the islands and the documents which provide evidence of this.

In order to understand the extent of acceptance on the part of the inhabitants of the islands for these services, I interviewed some of them, such as Mr. Mohamed Bu-Ghanim, the representative of the ruler of Sharjah in the island of Abu Musa, and Mr. Mohamed Said Al-Suwaidi, the civil servant responsible for the electricity station in the island of Abu Musa. I also interviewed Mr. Mohamed Ali Abu Al-Qasm and his son Abdul Rahman from among the inhabitants of the island of Greater Tunb. These interviews permitted me to see the loyalty of the inhabitants of the islands to the two governments and their cooperation with them to develop the islands. I acquired during these interviews some documents which prove the loyalty of the inhabitants, such as passports issued to some islanders by the governments of Sharjah and Ras al-Khaimah, before the Iranian occupation of the three islands.

From all the above, I formed a clear understanding of the Arab point of view on the matter, particularly the view-point of the government of the UAE concerning its right of sovereignty over the three islands.

1.4.2. In Iran

The second step was to learn the Iranian point of view concerning the case, since it is the other party involved. I travelled to Tehran and arranged for a meeting with Mr. Abbas Malki, the Under Secretary for Education and Political Research at the Ministry of Foreign Affairs. However, his engagements did not permit the planned meeting, and I was referred to Mr. Abbas Haghighat, the head of department of the Persian Gulf Research in the Institute for Political and International Studies to the Iranian Ministry of Foreign Affairs. I discussed the subject both with him and with members of his department. The Iranian point of view was made clear to me. I was given some Persian literature on the subject and also the names of Iranians who had written on the matter in English such as Dr. Mojtabeh-Zadeh, who lives in the UK, and Professor Mirfendereski, who lives in the USA.

1.4.3. In the United Kingdom

After searching in the two disputing countries and understanding their points of view, it was necessary to search in the UK since it was the last western presence in the Gulf region. The UK possesses a wealth of documents on the history of the region, especially on the dispute over the three islands, because it used to act on behalf of the emirates in matters of foreign affairs before their independence in 1971.

I started my search in the British Library, particularly in its Maps Library to study the map of 1886 which colours the three islands the same as the Iranian border, on which Iran builds her claim of sovereignty over islands. I also studied

other British maps of the Gulf region which were drawn before and after the 1886 map, to know whether British maps before and after 1886 represented the three islands in the same colour as Iran or not.

I also examined the Oriental and India Office Collections, because of the documents concerning the Shaikhs of the Trucial States and their correspondence with the British Political Resident in the Gulf. This was to examine the letters exchanged between the Qawasim of the two shores of the Gulf, either between them or between them and the British Political Resident in the Gulf. They prove the recognition of the Qawasim of Lingah on the Iranian shore of the ownership of the three islands by the Qawasim of the Omani shore.

Another source of documents was the Public Records Archives; this contains correspondence between the British government represented in the Ministry of Foreign Affairs and the British Political Resident in the Gulf and the British Ambassador in Tehran. This research was undertaken to know the viewpoint of the British government on the dispute over the three islands through their diplomatic correspondence from their entry to the Gulf region until they left it.

The sovereignty dispute over the three islands is also related to the right of both parties to search for oil in the islands and their territorial waters. It was, therefore, essential to study the correspondence of the British Petroleum Company in the company archives which are now housed in the University of Warwick. The BP Archive is an important since it was this company which searched for oil in the Gulf region, especially in Iran and the UAE. The aim was to find out whether one of the disputing parties had granted the company the right to search for oil in the islands and their territorial waters.

In addition, I read and met with the authors of articles in British journals on the subject of the three islands' dispute. These included Dr. Richard Schofield, research consultant in the School of Oriental and African Studies, University of London, who has written an article on the dispute over the Gulf islands and edited the Public Record documents which relate to the islands and maritime boundaries of the Gulf in 18 volumes covering the period from 1798 to 1960.

After researching and reading I built a personal understanding of the points of view of the British government and British writers on the dispute over the three islands between Iran and the UAE.

1.5. Research problems

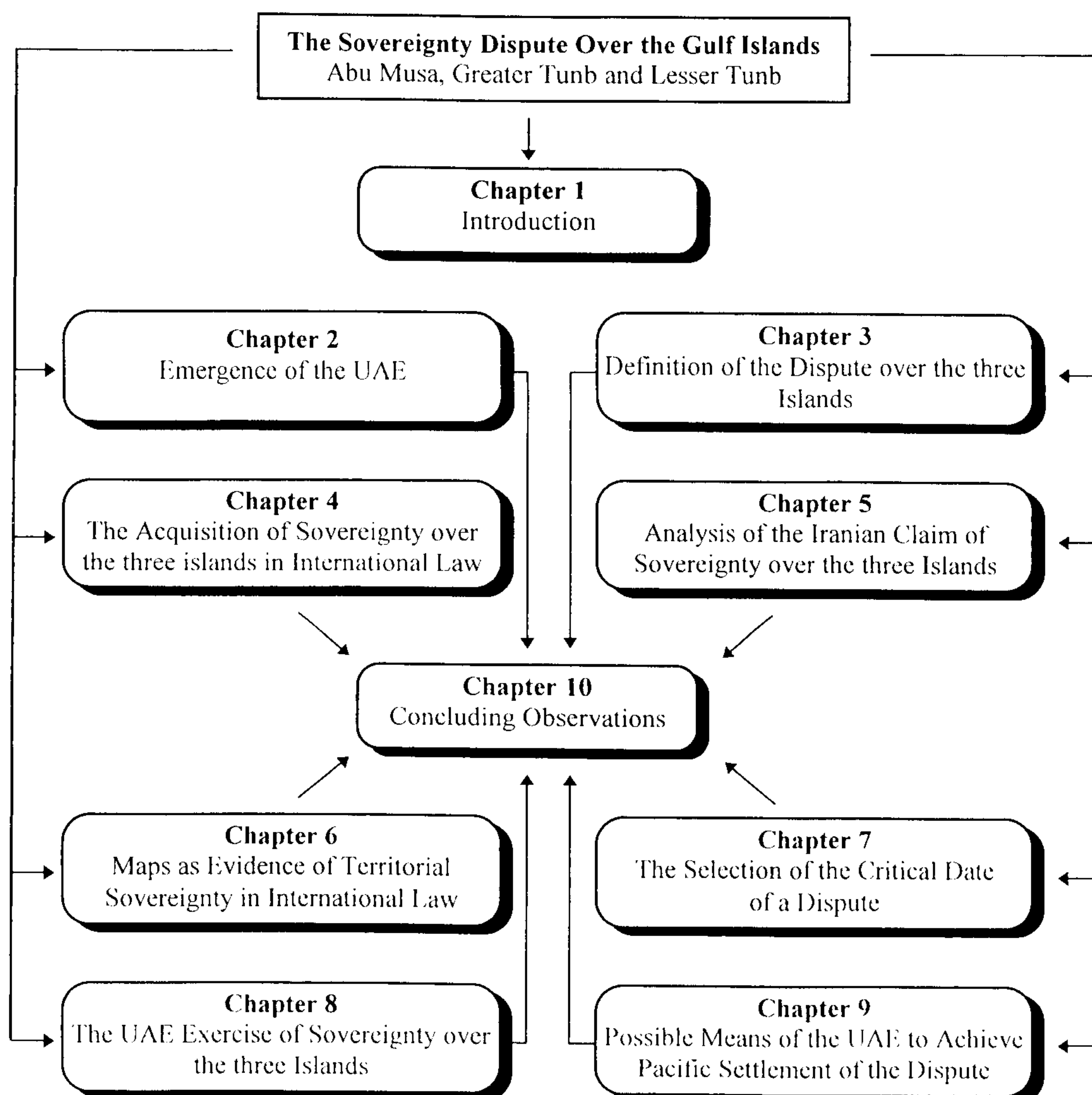
In collecting information, obstacles face the researcher who studies a dispute concerning sovereignty over a territory. The first problem I was faced with was the understandable secrecy surrounding information and documents. This problem was evident during my visits to the civil servants responsible for the dispute in the two disputing states, Iran and the UAE, because of the sensitivity of the case. Also neither wished to bring to my attention any piece of information or any document which could harm their interests in the future solution of the dispute.

The major problem, however, was the refusal of Professor Mirfendereski to allow me to read his research on the dispute, for which he had received a Ph.D. in 1985 from the USA. This was despite continual efforts on my behalf by the University Library and my supervisor Dr. Scobbie. This is not to mention my own telephone calls to Professor Mirfendereski and all my efforts to persuade him to allow me to read his research, he being the only person to have discussed the dispute legally from an Iranian point of view. He was adamant on the subject, despite the length of time since the completion of his degree. Professor Mirfendereski justified

his insistence on not making his research available by saying that some Iranian authors who wrote on the dispute over the three islands have studied his research and copied large parts of it, claiming that it was their own research with no mention of his original research.

1.6. Structure of the thesis

The study of the sovereignty dispute over the three islands Abu Musa, Greater Tunb and Lesser Tunb is arranged in ten chapters and appendices as shown in the following figure :



As shown in the figure, the present introduction is contained in the first chapter.

The emergence of the UAE state is described in chapter two; the historic stages of the territory of the UAE until the foundation of the state are reviewed especially

those territories controlled by the tribe of Qawasim, the rulers of the two Emirates of Sharjah and Ras al-Khaimah, because of the ties between them and the three islands under discussion. In the same chapter I concentrate on the treaties signed between the British government and the rulers of the two Emirates, especially the treaty of 1892, so as to highlight the rights given to Britain according to the treaty. I also highlight the legal status of these Emirates according to the treaties with the British government before the foundation of the UAE government.

Chapter three is assigned to the study of the geography of the three islands, and the historic background of the dispute, in order to look at the historic rights of each disputing party over the three islands.

In chapter four I explain the means of acquiring a territory according to international law, in order to clarify the legal argument whereby the Iranian government took its decision to acquire sovereignty over the three islands by the use of force. This also aims to explain the legal argument whereby the UAE builds its claim of sovereignty over the islands.

In chapter five, I analyse the Iranian arguments and their legal validity to acquire sovereignty over the territory. Chapter six is assigned to the study of maps and their legal power to prove sovereignty over a territory, and the application of the concept on the Iranian claim that the British map of 1886 recognises the Iranian sovereignty over the three islands.

In chapter seven I discuss how to select the critical date of a dispute. Then I define the critical date when the dispute over the three islands between Iran and the UAE crystallized.

Chapter eight is assigned to the discussion of different forms of exercising sovereignty by the governments of Sharjah and Ras al-Khaimah over the three islands. I also review the recognition of this sovereignty by Iran and other countries.

In chapter nine I look at the different attempts on the part of the UAE to settle the dispute by peaceful means. I also present my opinion on how the dispute may be resolved between Iran and the UAE over the three islands.

In the last chapter I conclude with the findings of the different parts of the research. I then add suggestions for the government of the UAE.

CHAPTER TWO

Emergence of the UAE

2.1. Introduction

With the advent of Islam in the Gulf region in the seventh century, both the Arabian tribes and Persian regions (what is known today as Iran)¹ were united under the Islamic state. With the passage of time and the decline of the Islamic state, the Gulf region reverted back to disunity. Persia was separated from the Islamic state, and the tribes of Arabia became disunited. Each tribe controlled and practiced sovereignty over a particular territory. Disunity led to conflicts aiming to expand territories, either between the Arabian tribes or between the tribes and Iran over the Gulf region.

With the European presence in the Gulf region conflicts occurred between the European states and the Arabian tribes who were living alongside the Gulf at that time, to protect their territories from foreign intrusion. Because of their military superiority, the European states managed to occupy some of the Arabian tribes' territories, and to subdue them. Some tribes thus lost their sovereignty over parts of their territories.

The aim of this chapter is to shed light on the historical stages of the territory of the emirates, and its legal status before the emergence of the modern state of the UAE. Emphasis will be placed on the Qawasim and their role in the region, and the region which was under their sovereignty from their appearance until their unification with the rest of the emirates in 1971, because the three islands Abu

¹ - Iran was known before March 1935 as Persia, when the Iranian government, for the sake of consistency, requested all foreign countries to use the official name of Iran. The correct designation has gained general usage. See D.N. Wilber, *Iran Past and Present*, (1948), P.v.

Musa, Greater Tunb and Lesser Tunb are connected to this tribe. There will also be discussion of the treaties signed between the British government and Qawasim, the rulers of Sharjah and Ras al-Khaimah, and especially the treaty of 1892, to discover whether these treaties gave the British government the right to dispose of the territories of the two emirates, either by sale, gift or border definition.

In this chapter, the region of the UAE will be defined geographically, and the history of the emergence of the region of emirates high-lighted. Finally, the legal status of the territory of the UAE before independence will be clarified.

2.2. Geographical description of the UAE

The UAE was established as a state only in 1971; before this, the area was known as the Emirates of the Trucial States or Trucial Oman.² The UAE is at the south east end of the Arabian Peninsula and is an independent sovereign Arab state. It is made up of the union of seven Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Qaiwain, Fujairah and Ras al-Khaimah. It is bordered by Qatar and the Arabian/Persian Gulf in the North and North-West, Saudi Arabia in the West and South, and Oman and the Gulf of Oman in the East and North-East.³ Its total area is 83,600 square kilometres, which includes over a hundred offshore islands.⁴

2.3. The history of the emergence of the UAE's territory

At the beginning of the sixteenth century, European countries began to realize the importance of the Gulf, which is situated between Europe and India, and Europeans started to send their fleets to this region. Thus, local inhabitants of the region

² - After 1820, Britain used the name Trucial States instead of the Omani Coast Emirates.

³ - See Appendix B, Map 2, P.296.

⁴ - Central Statistical Department, Ministry of Planning of the UAE, (1993).

became involved in conflicts with imperialist countries. From time to time, this led to changes in boundaries and territories in the region.

2.3.1. Portuguese occupation of the Gulf region

Portugal set her sights on the Gulf area immediately after Vasco da Gama discovered the sea route to India in 1498.⁵ In 1507, the Portuguese fleet arrived in the Gulf and began its domination over the Gulf region, its motivation being to monopolize trade between India and Europe.

Affonso de Albuquerque, the Portuguese military leader, saw the Strait of Hormuz as one of the key strategic positions whose possession would secure control of the vast Indian Ocean-East Indies region. His seizure of the island of Hormuz, which was inhabited by Arabs, was the key to a century of Portuguese control of the Gulf.⁶

In 1515 the Portuguese occupied the majority of the Gulf coastal cities, including Ras al-Khaimah, as well as the coastal cities of the Gulf of Oman such as Musqat and Khor Fakkan port which was an enclave of the emirate of Sharjah.⁷

The Portuguese occupation of the Gulf lasted for more than a century and was characterized by excessive brutality and by destruction of cities. The inhabitants of the Gulf suffered severe persecution at the hands of the Portuguese who established themselves as the masters of the main ports on both sides of the Gulf. The Portuguese did their utmost to prevent any other vessel from undertaking

⁵ - D. Hawley, *The Trucial States*, (1970), P.68-9.

⁶ - F. Heard-Bey, *From Trucial States to United Arab Emirates*, (1982), P.271.

⁷ - M.C. Peck, *The United Arab Emirates*, (1986), P.27. Also, Hawley, op. cit., P.72.

commercial activity. Their vessels alone dominated the Gulf waters and they organized its trade by means of licenses issued by them.⁸

The Portuguese took control of the Gulf without any opposition or contest throughout that period, despite attempts made by the tribes of the Gulf of Oman to liberate the Gulf coast from their occupation. Such attempts, to drive the invaders out of the Gulf, ended in failure due to the tribes' disunity, internal conflicts, and lack of leadership.⁹

At the end of the sixteenth century the fortunes of the Portuguese in the Gulf had changed as a result of the arrival of other European vessels which had come to share dominance over the region. The Dutch appeared on the eastern waters of the Gulf while the British were moving in the same direction. These two imperialist powers were, however, more aware of the commercial interests than the Portuguese. They were able to occupy an eminent position and to bring about a better acceptance by the Asian countries. The British, for instance, were able to establish a strong relationship with Iran which, in effect, led to the gradual weakening of the Portuguese dominance of the Gulf. Portugal lost its position in the Gulf after its naval fleet was defeated by the British at Jask in 1615.¹⁰

2.3.2. *Iran's occupation of part of Ras al-Khaimah*

In 1587, Shah Abbas acceded to the throne of Iran. His reign coincided with the deterioration and waning of the Portuguese power in the east. He benefited from this

⁸ - S.M. Al-Abid, *al-Sraa al-Omani al-Prtqli w-Thrir al-Srq al-Afriqi Khlal al-Qrn al-Saba Ashr (The Omani-Portuguese conflict, and the Liberation of the East of Africa during the Seventeenth Century)*, *The Relationship between the Arabian Gulf and Eastern Africa*, (1987), P.126.

⁹ - Ibid. Also, Y.H. Rajb, *Al-Khaleej Al-Arabi: w-al-Sraa al-Dwli al-Muasr (Arabian Gulf and Contemporary International Conflict)*, (1989), P.14.

¹⁰ - See Hawley, op. cit., P.73-4. Also see S.F. Al-Hiti, *Al-Khaleej Al-Arabi: Drasah fi al-Jghrafi al-Siasih (The Arabian Gulf: A Study of Political geography)*, (1978), P.32.

situation by extending his authority and dominance over some of the Portuguese Gulf colonies. Abbas headed for the Gulf at the beginning of the seventeenth century and was able to take control of Bahrain in 1602.¹¹ In 1618, his conflict with the Ottoman Empire was over; hence he was able to head south and gain the support of the Arabs living in the Lar region. The British, for their part, started to strengthen their commercial relations with Iran where the Shah realized that they were better commercial partners than the Portuguese. He granted them commercial franchises and later extended that grant in order to gain British support against the Portuguese. Among the privileges he conferred upon them was allowing them to establish a base at Jask on the Gulf of Oman, to save them the journey through the Strait of Hormuz where the Portuguese could attack them from their strong fortresses on the island of Hormuz.¹²

Despite all these measures, the Portuguese were determined from the very beginning to sever the British commercial sea lines with Iran. Thus they intercepted the first British naval convey which came from Surat in India on its way to the Gulf. This led to an armed encounter near Jask in 1615 and the British naval force was victorious. These events turned the British into natural allies of the Shah in his struggle against the Portuguese.¹³

A naval war continued ferociously between the Portuguese on one side and the British and the Iranians on the other, and the coast of Iran was subjected to a number of attacks. However, the fall of the island of Hormuz represented a fatal blow to the Portuguese prestige in the Gulf. This matter increased the Iranians' power and, in 1619, they were able to reach the other side of the Gulf and occupy that part of Ras

¹¹ - Hawley, op. cit., P.74.

¹² - J. Marlowe, *The Persian Gulf in the Twentieth Century*, (1962), P.6.

¹³ - Ibid.

al-Khaimah known as Julfar. There they established a fortress and thus vied with the Portuguese for the control of that Emirate.¹⁴

The Shah exploited the fall of Hormuz and built opposite to it a new port, on the site of the village known as Gombrun. He named it 'Bandar Abbas' and opened it for European commerce.¹⁵

However, despite the weakness of the Portuguese at that period due to their loss of some of the regions they used to occupy, the Iranians were still unable to liberate all the regions on the Iranian coast and the Gulf islands from the grip of the Portuguese.¹⁶

2.3.3. *Ya'ruba regain the occupied territories*

The Portuguese continued to consolidate their domination of the Gulf region on the western side, particularly the coastal regions starting from Musqat and up to Ras al-Khaimah. This increased the suffering of the inhabitants from the brutal treatment of the Portuguese rule along the coast. The situation spurred the Arab tribes to begin contacting one another, forget their differences, and concentrate on the common problem they all suffered from, namely the Portuguese colonial power.

At the end of 1624, the majority of the tribes of Oman and the coast of Oman - currently known as the United Arab Emirates-elected Nasir bin Murshid Al-Ya'rubi as a leader and Imam of all these tribes in order to confront the Portuguese and put an end to their brutal rule. Within a short period of time, the Imam was able to take control of a large section of Oman, particularly the central regions such as 'Abri and

¹⁴ - Al-Hiti, op. cit., P.32-3.

¹⁵ - Marlowe, op. cit., P.7.

¹⁶ - A.M. Rashd, *al-Irfaqiat al-Siasih w-al-Iqtisadh alti Aqdt bin Imarat Sahl Oman w-Britania 1806-1971 (Political and Economic Treaties between the Emirates of Oman and Britain 1806-1971)*, (1989), P.19.

Nazawi, as well as the Zahira region which lies between the al-Siar region and al-Batina coast.¹⁷

Following these victories, the Ya'rubas then moved on to liberate the two cities of Musqat and Matrah on the coast of Oman from the Portuguese. Fierce battles raged between them and many were killed from each side. However, all of this did not lead to the liberation of Musqat and a peace treaty was signed between the two parties.

The most significant provisions of the treaty stipulated that the Portuguese should hand over to the Arabs all the territories and buildings that belonged to them in the Sahar region near Musqat, and that they should treat the Arabs in Musqat and Matrah better.¹⁸

Among the results of this peace treaty were the weakening of the Portuguese in the region, and the increase in the Ya'rubas strength which encouraged the latter to liberate the remaining Arab cities in the Gulf. Their next destination was Ras al-Khaimah which had two fortresses. The Portuguese were in control of one of these; in addition, they had two vessels in the Ras al-Khaimah port. The Iranians controlled the other fortress.

The Ya'rubas then moved on to attack the fortress controlled by the Iranians; here a dreadful battle took place. During it, the Portuguese supplied the Iranians with weapons and ammunition to defeat the Ya'rubas; this they were unable to do. The constant determination of the Ya'rubas to liberate the region led to the defeat of the Iranians and their withdrawal from Ras al-Khaimah. Meanwhile, the Portuguese were confined to the other fortress with no authority over the city. Thus the

¹⁷ - B.J. Slot, *Arab al-Khaleej 1602-1784 (The Arabs of the Gulf 1602-1784)*, Translation to Arabic by A. Kuri, (1993), P.146.

¹⁸ - Rashd, op. cit., P.20.

Portuguese were also confined to Musqat and, after a while, were forced to leave that region as well.¹⁹

The Ya'rubas, during 117 years' rule, were able to dominate the Gulf region up until 1741. During that period they maintained a strong naval fleet able to drive out the Portuguese from the ports they used to occupy on the Gulf, and from the Gulf of Oman, as well as the Indian coasts and Africa's eastern coast. The Ya'rubas were also able to gain strong footholds in Bahrain, the Zafar region, the island of Hormuz, Qeshm and Bandar Abbas.²⁰ Slot, quoting from archives of the Dutch East India Company, stated that the Iranians had totally disappeared from the Gulf and the supremacy of the leaders of the Arab tribes covered the whole region including the Iranian coast of the Gulf.²¹

2.3.4. *Qawasim inherit Ya'rubas dominance in the Gulf region*

After the Ya'rubas took control of the Gulf region in the eighteenth century, the Arab tribes lived in peace and started to migrate from inland to the coast of the Arabian Peninsula. They gradually resumed navigation, commerce and fishing for pearls in the waters of the Gulf. At that time, the Arab tribes moved from Najd and settled in Bahrain and Kuwait. The Sabah family settled in Kuwait while the Khalifa family and the Jalahima settled in al-Zabara and Bahrain. In Oman, following the weakness and disintegration of the Ya'rubas state, the Bu Sa'id family ruled Musqat in 1741.²² At the same time, two new political powers which were independent of the Omani

¹⁹ - Ibid. P.21. Also Al-Abid, op. cit., P.127.

²⁰ - M.M. Abdullah, *Imarat al-sahl w-al-Dwlh al-Sawdi al-Awlh 1793-1818 (The Emirates of the Trucial States, Oman and the First Saudi State 1793-1818)*, (1978), P.63. Also Marlowe, op. cit., P.9.

²¹ - Slot, op. cit., P.324.

²² - See Rajb, op. cit., P.16. Also see J.Z. Qasem, *Al-Khaleej Al-Arabi: Drasah L-Tarik al-Imart al-Arbaih fi Asr al-Twsa al-Orwbi al-Awl 1507-1840 (The Arab Gulf: A Study of the Arab Emirates in the age of the First European Expansion 1507-1840)*, (1985), P.14-5.

state appeared on the coast of Oman (the area known at present as the United Arab Emirates). The first political power was a naval force that consisted of an alliance of tribes under the leadership of Shaikh Rahmah bin Matar Al-Qasimi,²³ who was recognized by Nadir Shah as the hereditary ruler of Ras al-Khaimah in 1740.²⁴ The dominion of this power extended from Musandam promontory on the Strait of Hormuz to the north to Sharjah on the south. The second power was a land force that consisted of the Bani Yas tribe²⁵ and their allies from other tribes, under the leadership of Al Nahyan who lived in Zafra and Abu Dhabi city. Their influence extended along the Gulf coast from Dubai to Qatar.²⁶

The Iranians, after they took control of Lingah²⁷ and Qeshm island and drove the Qawasim out of these places in 1737, started to strengthen their naval fleet and make preparations to recapture the occupied regions. However, their strength at the time fell short of achieving that objective. Following the death of Nadir Shah in 1747, the Iranians disputed among themselves and this led to the weakness of their authority over the Gulf coast and the regions they occupied.

In 1750, the Qawasim succeeded in crossing the Gulf a second time to the Iranian coast, to help the Iranian ruler of the port of Bandar Abbas and Hormoz island, who was in conflict with the Shah of Iran. They managed to recapture Lingah

²³ - The Qawasim are not a tribe but a ruling clan. By the early nineteenth century Qawasim rule was consolidated along the Gulf coast north and east of Dubai and into the Musandam peninsula. In 1921, the Qawasim divided their territory into two emirates, and became the ruling families of both the emirate of Sharjah and the emirate of Ras al-Khaimah. For more details on Qawasim, see Peck, *op. cit.*, P.28. Also see Heard-Bey, *op. cit.*, P.82. Also see Abdullah, *op. cit.*, P.89.

²⁴ - Slot, *op. cit.*, P.322.

²⁵ - Bani Yas is a tribe in the western part of the Trucial States. They were many tribes which had been welded together by a common history of several centuries into a tightly knit federation by the middle of the seventeenth century. Now Bani Yas is the most numerous tribal grouping in the area of the UAE, Al-Nahyan is the ruling family of Abu Dhabi, the capital city of the UAE, and Al-Maktoum the ruling family of Dubai. For more details on Bani Yas, see Heard-Bey, *op. cit.*, P.27. Also see Peck, *op. cit.*, P.32. Also see Abdullah, *op. cit.*, P.98.

²⁶ - Abdullah, *op. cit.*, P.90.

²⁷ - Lingah was a famous town and port on the Iranian coast in the eighteenth and nineteenth centuries.

and other locations on the Iranian shore. The Qawasim continued to control Lingah until 1767, when the Iranians under the leadership of Karim Khan succeeded in recapturing it. However, in 1780, the Qawasim managed to regain control of Lingah after the death of Karim Khan in 1779.²⁸ Within ten years, the Qawasim were able to take control of the majority of the important regions in the Gulf, such as Lingah, Qeshm island, Leift and Shanas on the Gulf of Oman. A group of them remained to rule Lingah and run the affairs of the other regions, as well as the islands adjacent to the Iranian coast.²⁹

The Qawasim continued to rule the Lingah region and the regions surrounding it up until 1887, when the Iranians drove out the last Qasimi ruler and took control of Sirri island. However, the Qawasims' rule over the Iranian coast was only interrupted for a short period when Karim Khan took control of Lingah between 1767 and 1780. As Niebuhr mentions, the control of Qawasim, the expansion of their influence and sovereignty over the Gulf region, and their naval power in 1765 were such that:

This petty sovereignty extends from Cape Mussendom along the Persian Gulph. The Persians call it the country of Dsjulfar (Julfar), another Cape near Mussendom. The Europeans also have thus learned to call these people the Arabs of Dsjulfar. The other Arabs call it Seer, from the town of the same name, which has a good harbour, and is the seat of the Schiech. He formerly possessed, and indeed still retains, the isle of Scharedsje (Sharjah), with some considerable places upon the opposite side of the Gulph, among which are Kunk and Lundsje (Lingah).

This country not long since acknowledged the sovereign authority of the Imam; but it has withdrawn itself from this condition of dependence; and the Schiech often goes to war with his old masters. Yet he is not strong enough to defend himself without assistance; and therefore takes care to live in a good understanding with the other independent Schiechs, especially with the Schiech of Dsjau, whose dominions lie westward from Oman.

²⁸ - J.G., Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, Vol.I, Part 2, Historical, (1915), P.2063-4.

²⁹ - Ibid. Vol.I, Part 1, P.632.

The Prince of Seer makes some figure among the maritime powers in these parts. His navy is one of the most considerable in the Persian Gulph. His subjects are much employed in navigation, and carry on a pretty extensive trade.³⁰

2.3.5. *British control of the Gulf region*

At the beginning of the eighteenth century, the British started to make regular journeys to some of the Gulf regions after the establishment of the British East India Company. They were greatly welcomed at that time by the Shah of Iran due to the tension between the Iranians and the Portuguese as a result of the Portuguese policy of trade monopoly in the Gulf. As a result of the English support of the Iranians in their war against the Portuguese in 1615, the Shah granted them the right to establish branches for their company in the Iranian cities. The British Company then established a centre on the Gulf and trade centres in Bandar Abbas, Asfahan, Shiraz and Basra. On 12 April 1763, the Shah of Iran also agreed to a British diplomatic representation in Bushire.³¹

During that period, there were two other European powers competing with the British for control over the Gulf region. These two powers were Holland and France. The Dutch were based at Bandar Abbas which they made their trade centre. They were competing with the British in trade by putting pressure on the Shah to exempt them from taxes.³² This conduct inflicted great damage on British trade in the Gulf which was only saved by a war between the British and the Dutch in 1653-1664. As a result of this war, armed conflict moved to the Gulf region. Both the British and the Dutch tried to seek the support of the remaining Portuguese forces in the Gulf to enter the war on their side. The Portuguese, however, rejected that demand and

³⁰ - M. Niebuhr, *Travels Through Arabia*, Vol.II, P.123-4.

³¹ - Hawley, op. cit., P.78.

³² - M.R. Al-Fil, *al-Ahmih al-Istratijih Ll-Khaleej al-Arabi (Strategic Importance for the Arabian Gulf)*, (1988), P.75.

remained neutral. Fierce clashes took place between the British and the Dutch; and some of the British vessels were sunk. The superiority of the Dutch was evident and they were able to impose their authority over the region and take trade under their control.³³ At that time a third rival force, namely the French East India Company, appeared. Following the arrival of the French in the Gulf region, the Dutch resorted to cooperation with the British in order to drive out this unexpected rival. The French presence, however, did not last long. They withdrew from the region as a result of events in Europe and their defeat in war by the British. Their withdrawal took place at about the end of the seventeenth century.³⁴

The Dutch made a big mistake in cooperating with the British, for their strength began to gradually wane and their influence in the region to decrease after they failed to persuade the Shah to stop dealing with the British in 1688. This led to their gradual withdrawal from the region. They withdrew from Bahrain in 1753 and from Bandar Abbas in 1759, leaving the British free to control the Gulf region.³⁵

The expansion and progress of Britain's trade and the increase of its military influence gave the Gulf region greater significance at the beginning of the nineteenth century. From that time, Britain began to change its attitude towards the region. It shifted from the logic of negotiation and diplomacy to the language of violence and political and military pressure, so as to guard the region against the influence of any other state that tried to compete with it for control. Thus Britain was left alone to control the Gulf region.³⁶

³³ - See Peck, *op. cit.*, P.28. Also see Marlowe, *op. cit.*, P.7-8.

³⁴ - See Hawley, *op. cit.*, P.77.

³⁵ - *Ibid.*, P.76.

³⁶ - M.Y. Olwan, United Arab Emirates, *EPIL*, Vol.12, (1990), P.382.

2.3.5.1. Treaty of 1806

This intervention and control of the Gulf region by the British was treated as unacceptable by the Qawasim tribe which had a large naval force in the region. They felt that the British had endangered their naval force by intervening in their sphere of influence. This led to the Qawasim's resistance and interception of British vessels.³⁷ Their conduct, therefore, represented a source of danger to the British who decided an end should be put to the Qawasim. They alleged that the activity of the Qawasim in the Gulf was naval piracy which should be stopped. What further increased the British fear was that, after the assassination in 1804 of the of Sultan bin Ahmed, the ruler of Musqat, the Qawasim had taken control of Bandar Abbas on the Iranian coast which used to be under the control of the ruler of Musqat. By so doing, they were able to control both sides of the Gulf entrance. The British East India Company considered this move as a threat to British navigation in the region, therefore, the British government in India decided to attack the Qawasim in Bandar Abbas and drive them out.³⁸

In June 1805 the British government sent a military expedition to Bandar Abbas and besieged it. After a fight that lasted one day the Qawasim surrendered. When the news reached the Qawasim on the coast of Oman, they dispatched 30 vessels in an attempt to lift the siege on Bandar Abbas and drive out the British. They failed to achieve their objective, due to the strong British fleet present in the area. This led to the conclusion of a peace treaty on 6 February 1806.³⁹ The most important articles were:

Article 1. There shall be peace between the Honourable East India Company and Sultan bin Suggur, Joasmee, and the whole of his

³⁷ - Heard-Bey, op. cit., P.68.

³⁸ - Rashd, op. cit., P.42.

³⁹ - Hawley, op. cit., P.100.

dependants and subjects on the shores of Arabia and Persia, and they shall respect the flag and property of the Honourable East India Company, and their subjects wherever and in whatever it may be, and the same the Honourable East India Company towards the Joasmee.

Article 4. Should any British vessel touch on the coasts of the Joasmee for wood or water, or be forced on shore by stress of weather, or any other cause, the Joasmee shall assist and protect the said vessel and property, and permit it to be disposed of or carried away, as their owners shall see fit, without claim or demand.

Article 6. When the above is confirmed and ratified by both parties the Joasmee shall frequent the English ports from Surat to Bengal as before.⁴⁰

The treaty did not last more than two years, the Qawasim and the British clashing again in 1808. The reason for this was the British allegation that the Qawasim had attacked a number of vessels in the Gulf and detained some of them.⁴¹

2.3.5.2. The Preliminary Treaty and the General Treaty of 1820

The increase of the Qawasim's naval force obstructed the British from extending their authority over the Gulf. Every now and then, the period between 1808 and 1819 witnessed fierce clashes between the warships of both sides. The area of conflict extended from the west coast of India to the Gulf. For this reason, the British government in India was more than ever determined to put an end to the Qawasim's opposition and take all measures in order to destroy their forces. It sent an army expedition in 1819 from Bombay towards Ras al-Khaimah, the stronghold of the Qawasim, so as to destroy their forces in the region.⁴² The British vessels arrived at Ras al-Khaimah port in December 1819 and launched their heavy artillery fire on the city. The Qawasim's artillery returned fire. However, in the end, the British forces proved superior and occupied the city where the leader of the Qawasim, Shaikh Hassan bin Rahmah, surrendered to them. Following this, the

⁴⁰ - CTS, Vol.58, 1804-1806, P.387.

⁴¹ - See M. Al-Otabi, *The Qawasim and British control of the Arabian Gulf*, Unpublished Ph.D. Thesis, University of Salford, (1989), P.114-6.

⁴² - Ibid. P.145-6.

British forces began to take the remaining regions of the Trucial States under their control set fire to the vessels of the Qawasim, and destroyed their fortresses.⁴³

The rulers of the Trucial States were forced to sign two peace treaties in 1820. The first treaty, the Preliminary Treaty, stipulated that all the fortresses, vessels and artillery pieces in the Trucial States (which signed the treaty) should be handed over to the British forces, and that Ras al-Khaimah should remain under the control of the British government.⁴⁴ The second treaty, the General Treaty, stipulated that the British vessels were entitled to inspect in the waters of the Gulf the vessels that belonged to the rulers of the Trucial States who should accept this and hand over the vessels' manifestoes to the British. The vessels belonging to the Trucial States rulers were also entitled to enter the ports of Britain and its allies, and they had the right to undertake business there. If they came under attack, then the British government would deal with the matter in earnest.⁴⁵

It is clear that these two treaties stripped the Qawasim of their vessels, artillery and fortresses. They also prevented them from building vessels or establishing fortresses. This led to the extinction of the Qawasim's naval force, which made them incapable of defending their islands and regions on the Iranian coast, such as Lingah, against any aggression. In return, Britain agreed to defend only the Qawasim's vessels and not their territory. For example, Article 10 of the General Treaty in 1820 provides: "The vessels of the friendly Arabs, bearing their flag above described, shall enter into all the British ports and into the ports of the allies of the British so

⁴³ - Ibid. P.147-52. Also see Hawley, op. cit., P.112-3.

⁴⁴ - See this agreement in CTS, Vol.70, 1819-1820, P.471.

⁴⁵ - See this agreement in CTS, Vol.70, 1819-1820, P.463.

far as they shall be able to effect it; and they shall buy and sell therein, and if any shall attack them the British Government shall take notice of it".⁴⁶

2.3.5.3. Exclusive Agreement of 1892

At the beginning of 1887, the Iranian government looked towards the Gulf and tried to establish a foothold in the region, and extend its authority over it. The first thing it did was to attack the port of Lingah on the coast, arrest its Qasimi ruler and put the city under its control. Following this, the Iranian government took control of Sirri island.⁴⁷

This achievement gave the Iranians the incentive to move forward in order to place the Gulf region under their control and extend their influence, as they realized that no one had opposed them after they took control of Lingah. They sent a delegation to the rulers of the Trucial States in an attempt to persuade them to sign a friendship agreement with Iran. This agreement would guarantee their protection and keep the British influence away from the region. Among the most important points they discussed was the establishment of an Iranian diplomatic representation after the pattern of the British diplomatic representation.⁴⁸

Despite the failure of the Iranian government to persuade the rulers of the Trucial States to conclude a protection agreement, the British government was far from pleased by the Iranian conduct. It felt that Iran was intervening in its affairs in the region. In addition, there were other states which had ambitions to dominate the region, mainly the Germans, the French and the Russians. The British government was therefore left with no other option but to sign individual treaties with the Shaikhs of the Trucial States so as to establish a stronger foothold in the region and

⁴⁶ - Ibid. P.465.

⁴⁷ - See M.M. Abdullah, *The United Arab Emirates: A Modern History*, (1978), P.238-40.

⁴⁸ - Ibid. P.24-5.

guarantee that the rulers of the Trucial States would not cooperate with any foreign government or agency except with its approval. To that end, the rulers of the Trucial States signed an agreement in 1892 in which they committed themselves:

1st.- That I will on no account enter into any agreement or correspondence with any Power other than the British Government.

2nd.- That without the assent of the British Government, I will not consent to the residence within my territory of the agent of any other Government.

3rd.- That I will on no account cede, sell, mortgage or otherwise give for occupation any part of my territory, save to the British Government.⁴⁹

By means of this treaty, the Trucial States were put under the protection of Great Britain, and the British government ran the foreign affairs of the Emirates which signed the treaty. On the other hand, these treaties did not give the British government a free hand in dealing with the territories of the Emirates either through sale, gift or border delimitation.

This situation continued in the Emirates region without any change up until Britain left the Gulf region in 1971. The Emirates which signed the treaty, in December 1971, declared a union among themselves and established the current United Arab Emirates. This event was preceded by Iran's occupation of the three islands of Abu Musa, Greater Tunb and Lesser Tunb. Thus the United Arab Emirates lost control over part of its territory.

2.4. Legal status of the UAE territory before independence

It is an established historic fact that before the Portuguese arrival in the Gulf, the Arab tribes, who had their own political organization, ruled both sides of the Gulf coast.⁵⁰ However, the Portuguese colonial power did not deal with these tribes as a

⁴⁹ - CTS, Vol.176, 1891-1892, P.457.

⁵⁰ - *Dubai/Sharjah Border* case, ILR, Vol.91, P.558.

political entity, rather it occupied the Gulf region by the use of force and treated it as *terra nullius*.⁵¹ Unlike the Portuguese, the British government for its part dealt differently with the Gulf region despite its attempt to put both sides of the Gulf under its control and subjugate the tribes who were dominating the region. Such an objective could never have been achieved without the conclusion of peace treaties between the British government and the rulers of these tribes.

Despite the fact that these treaties did not define the legal status of the Trucial States, even though they were considered the legal basis for regulating the relations between the two parties, the British government nonetheless, in its official statements used to describe the Trucial States as an independent state under the British Protectorate or an independent state which had a special treaty with the British government. In addition, the British government considered the Trucial States a protectorate and not one of its colonies. It kept the Trucial States outside the Colonial Office and it assigned the running of its affairs to the Foreign Office rather than the Colonial Office.⁵²

This description by the British government led to questions about the delicate legal status governing the relations between the two parties. One opinion ruled that these treaties were void because, at the time they were concluded, the Trucial States were part of the Ottoman Empire, even if only in theory. The rulers of the Emirates who signed these treaties were not legally competent to sign them. On this basis, the treaties were not considered as being international and, therefore, no legal commitments could result from them.⁵³ This made the Emirates more like a colonial protectorate, despite the British government's official treatment of them as an

⁵¹ - See H.M. Al-Baharna, *The Arabian Gulf States*, (1975), P.72.

⁵² - Ibid. P.78-9.

⁵³ - See Rashd, op. cit., P.133-4.

independent state under its protection.⁵⁴ The supporters of this opinion further stated that the treaties were not concluded between equal political powers, rather were they concluded between a powerful state and a helpless or weaker one. Britain was in a position to dictate to the other party whatever it wanted. This is particularly true when we take into account that the treaties of 1806, 1820, 1892 and others, were prepared by the British Political Resident in the Gulf.⁵⁵

Al-Baharna holds the opinion that it is possible to recognize the treaties concluded between Britain and the Emirates as a criterion for defining their legal status. According to him, Britain used to distinguish between the Emirates, which were called protectorates, and its other protectorates. The essential difference was that Britain recognized in advance the sovereignty of the Emirates' rulers over their regions which remained independent of the British Crown. They were also granted semi-autonomy in the running of their internal affairs. The law which was set out in the treaties did not give a clear-cut distinction between the existence and non-existence of sovereignty, or between the concession and suspension of sovereignty in the regions under the British protection. By its very nature, this law gave the Emirates a special status which can be described neither as non-independence nor non-protection, but a combination of the two.⁵⁶

What further increased the ambiguity surrounding the Emirates' legal status was that they did not come under the British protection in the last century as a result of a formal document stating that result, as was the case in the former French

⁵⁴ - See *Oppenheim's International Law*, 9th edn., Vol.I-Peace, Introduction & Parts I, ed. by R. Jennings and A. Watts, (1996), P.274. In *International Law: A Treatise*, Vol.I-Peace, 8th edn., ed. H. Lauterpacht, (1955), Oppenheim distinguishes between 'a number' of British protected states in Asia of which, he says, 'their international status is not clear', and protectorates over African tribes, acquired through a treaty with the Chiefs of these tribes'. These latter protectorates, he continues, possess no international status whatsoever. P.195-6.

⁵⁵ - See Rashd, op. cit., P.133-4.

⁵⁶ - Al-Baharna, op. cit., P.79-80.

protectorates in North Africa and the case of Zanzibar and Egypt which came under the British protection in 1890 and 1914 respectively. Thus it was considered there was no provision in the Emirates' treaties with Britain which clearly stated that the Emirates were put under the protection system.⁵⁷ The protection system they were under had developed as a result of Britain's continuous running of their foreign affairs. Hence, as far as their international relations were concerned, Britain took the responsibility on their behalf. This situation continued up until Britain declared its departure from the Gulf region and terminated its peace treaties with the Emirates in 1971, and concluded a treaty of friendship with them.⁵⁸

2.5. Conclusion

It can be said that the regions controlled by the Trucial States which signed the peace treaties with Britain (currently known as the United Arab Emirates) used to be politically independent and sovereign according to the international norms prevailing at the time, before the arrival of the Portuguese in the Gulf. However, as a result of the Portuguese occupation of the region and their aggression against the coast tribes, these tribes lost control over a large section of their regions on both sides of the Gulf for some time, until they regained control once more. With the British infiltration into the Gulf, and as a result of the treaties they concluded with the rulers of the Emirates, the political independence and sovereignty of the Emirates were affected to a large extent. Therefore because of this protection and the prevention of the Emirates' tribes, who had signed the treaties, from entering into wars or running their own foreign affairs, they lost part of their region such as

⁵⁷ -Ibid. P.82-3.

⁵⁸ - See the Treaty of Friendship between the United Kingdom and United Arab Emirates in UNTS, Vol.834, P.273.

Lingah, Sirri island as well as the three islands of Abu Musa, Greater Tunb and Lesser Tunb.

The subject of my discussion in this research is the three islands Abu Musa, Greater Tunb and Lesser Tunb. I will shed light in the next chapter on the current dispute between Iran and the UAE over these islands.

CHAPTER THREE

Definition of the Dispute over the Three Islands

3.1. Introduction

The aim of this chapter is to define the conflict between Iran and the UAE over the three islands of Abu Musa, Greater Tunb and Lesser Tunb¹ in the Arabian/Persian Gulf. The chapter will be divided into two main sections. Firstly, the geography and population of the three islands will be described. The second part of this chapter concentrates on the historical background of the three islands to clarify the history of sovereignty over the islands in order to determine the historic rights of the two parties.

3.2. Geographical description of the three islands

The three islands are strategically situated at the entrance of the Arabian/Persian Gulf, opposite the Strait of Hormuz, which joins the Gulf with the Gulf of Oman and the Arabian Sea.² Hormuz is also one of the most vital channels of trade in the world because about two-thirds of seaborne trade in crude oil passes through it. The world's largest tankers use the Strait and a total of about 80 ships per day make the transit.³

3.2.1. Abu Musa island

Abu Musa lies in a strategic position at a distance of 88 nautical miles south-west of the Strait of Hormuz, at a distance of 38 nautical miles south-east of the Lingah shore in Iran, and 34 nautical miles north-west of the Sharjah shore in the UAE. The

¹ - The Tunb islands are respectively known to the Arabs as *Tunb al-Kubra* and *Tunb al-Sughra*, and to the Iranians as *Tunb-e Bozorg* and *Tunb-e Kuchek*.

² - See, Appendix B, Map 3, P.297.

³ - *The Times Atlas and Encyclopedia of the Sea*, (1989), P.154.

shortest distance between the UAE and the island is 32 nautical miles at Umm al-Qaiwain coast.⁴

This island is larger than the two Tunbs. It is about four square miles in size⁵ and is almost rectangular in shape. The island is relatively low land consisting of sandy plains, with dry grass which is grazed by domestic animals and wild gazelles. The surface of the island is uneven, with hills, the highest peak of which is 'known as mount Halwa'⁶, and is about 360 feet high. Abu Musa has a number of plantations of date palms. It relies on water from a number of wells.

There is no clear recent census for the population of the island Abu Musa though it is thought to have about 800 inhabitants.⁷ These are the Sudan tribe⁸ from Khan, a village in Sharjah.⁹ Most work in fishing, grazing cattle or agriculture. The island is rich with red iron oxide. There is a school and a mosque, and electrical generators and water desalination stations have been erected by the government of Sharjah. There is also a police station and a small medical clinic belonging to Sharjah. Any complicated medical cases are referred to Sharjah for treatment.¹⁰

⁴ - Tactical Pilotage Chart, TPC H-7D Iran, Oman, United Arab Emirates, Scale 1:5000.000, Produced under the direction of the Director of Military Survey, the Ministry of Defence, UK (1986).

⁵ - *Dubai/Sharjah Border case*, ILR, Vol.91, (1993), P.668.

⁶ - The mount known to the Arabs as *Jabal al-Kalwa*.

⁷ - See *Ndwat Juzur al-Khaleej al-Arabi: Asbab al-Nzain wa Mtatibat al-HL (Symposium of the Arabian Gulf: reasons for the conflict-requirements for the solution)*, (1994), P.71. Also see *Dubai/Sharjah border case*, ILR, Vol.91, (1993), P.668. This population figure is much smaller than the original number of inhabitants in the island before 1971. Due to Iranian harassment, a large number of the island's inhabitants have left for Sharjah. *Al-Wasat (Magazine)*, 20-26 September 1993, P.15.

⁸ - This tribe has no connection with the country of the same name. Members of the tribe live in Sharjah, Abu Dhabi, Dubai and Ajman.

⁹ - *Qdiat al-Ihtilal al-Irani Li-Juzur Tunb al-Kubra, Tunb al-Sughra, Abu Musa al-Tabainh Li-Dawlat al-Imarat al-Arabiah al-Mutahidah (The case of Iranian occupation of the islands of the Greater Tunb, The Lesser Tunb and Abu Musa which belong to the UAE)*, a paper submitted to the Conference of the Peace Islands, Ras al-Khaimah, 30 November-1 December (1994), P.5. Also, J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, Vol.IIB, Geographical and Statistical, (1908), P.1275.

¹⁰ - *Al-Wasat*, op. cit., P.15-16.

After the signing of the Memorandum of Understanding between Iran and the Sharjah government in 1971 a branch of Melli Iran Bank, a guard centre, a police station, and residence for soldiers and their families were built by the Iranian government in the northern part of the island.¹¹

3.2.2. Greater Tunb island

The Greater Tunb, or Tomb according to Lorimer,¹² is an island approximately circular in shape and about 2¼ miles in diameter.¹³ The Greater Tunb lies at a distance of 65 nautical miles south-west of the Strait of Hormuz. It is about 15 nautical miles south of the Qeshm island coast in Iran and about 41 nautical miles west-north of Al-Jazirah Al-Hamrah coast of Ras al-Khaimah in the UAE.¹⁴

The word 'tunb' has different meanings for the two parties. In the Tangestani dialect (south Iran) it means hill.¹⁵ The meaning of 'tunb' in Arabic is the peg of a tent or a long rope with which a tent is tied.¹⁶ It can be argued with some force from this meaning that the island is related to the Emirate of Ras al-Khaimah, because Ras al-Khaimah means a tent erected on the western shore of the Gulf and tied to the Gulf by the islands of Tunb.¹⁷

¹¹ - Ibid. P.15.

¹² - Lorimer, op. cit., P.1908.

¹³ - Vinson & Elkins, Attorneys at Law, Report on the Tunb Islands, Submitted to Ras al-Khaimah Government, Houston-Texas, (1980), P.3.3.

¹⁴ - Tactical Pilotage Chart, op. cit.,.

¹⁵ - See Afsar, I., *Jazirah-i Bu Musa va jazayir-i Tunb-i Buzurg va Tunb-i Kuchik shamil-i awaza-i tabii, jughrafiyayi, tarikhi, ijtimai, iqtisadi* (Bumusa island and Great and Little Tonb islands), (1993), P.111. Also see Pirouz Mojtahed-Zadeh, Iran's Maritime Boundaries in the Persian Gulf, The case of Abu Musa Island, *The Boundaries of Modern Iran*, (1994), P.106.

¹⁶ - See Ibin Mndwr, *Lsan al-Arab* (classical Arabic-Arabic dictionary), Vol.8, (1995), P.205-6. Also, A.M. Al-Fiwmy, *al-Msbah al-Mnir* (classical Arabic-Arabic dictionary), P.144.

¹⁷ - See A. Abdoul, *Azmt al-Juzur al-Arabiah al-Thalath bain Wadoh al-Mogf al-Imarati wa Tnaqd al-Mogf al-Irani* (The crisis of the three Arabic islands, between the clarity of the Emirati position and the contradiction of the Iranian position), a paper submitted to the Conference of the Peace Islands, Ras al-Khaimah, 30 November-1 December (1994), P.11.

There was no precise census of the island's inhabitants before their deportation on 30 November 1971. The island's population was approximately about 200 inhabitants.¹⁸ They were Arabs from the tribes of Tamim and Hurez.¹⁹ They lived by fishing, agriculture and cattle grazing and traded in fish in the markets of Ras al-Khaimah and Dubai. Drinking water is available in the island. The school and police station on the island were built by the government of Ras al-Khaimah. There is also a lighthouse. At present, no civilian population remains on the island. It has been adapted to an Iranian military base.²⁰

3.2.3. Lesser Tunb island

This island, also known as Nabiyu Tunb or Little Tunb, is approximately one mile long and $\frac{3}{4}$ mile wide.²¹ The distance between the island and Greater Tunb is 7 nautical miles. It lies 19 nautical miles south-west of the Qeshm island coast in Iran, and about 46 nautical miles north-west of Al-Jazirah Al-Hamrah of Ras al-Khaimah in the UAE. The shortest distance between the UAE and the island is 44 nautical miles from the Umm al-Qaiwain coast.²²

The island contains rocky hills of a dark colour at its north part, the highest altitude of which is 116 feet. It is unpopulated, because of the lack of drinking water.²³

¹⁸ - SCOR, 26 year, 1610th meeting: 9 December 1971, P.12. Some, however, consider the island's inhabitants at that time to number more than 400. *Al-Khaleej*, 2 December 1971.

¹⁹ - *Qdiat al-Ihtilal al-Irani Li-Juzur Tunb al-Kubra, Tunb al-Sughra, Abu Musa al-Tabainh Li-Dawlat al-Imarat al-Arabiah al-Mutahidah*, op. cit., P.5.

²⁰ - Interview with Mohamed A. Abu Al-Qasm and his son Abdul Rahman, from Great Tunb island, on 18 September 1993. Also see *Mjhalat Ras al-Khaimah (Ras al-Khaimah Magazine)*, No.74, 1 December 1979. P.11.

²¹ - Vinson & Elkins, op. cit., P.3.3.

²² - Tactical Pilotage Chart, op. cit.

²³ - Lorimer, op. cit., Vol.IIB, Geographical and Statistical, (1908), P.1909.

3.3. History of the three islands

The recorded history of the three islands goes back to the sixteenth century; they appear in old maps and through the descriptions of travellers who visited the Arabian/Persian Gulf. However, the initial indication of sovereignty over the three islands goes back to a first document of 1864,²⁴ which confirms that the islands belong to the Qawasim of Oman.

3.3.1. Early history

The earliest map which shows the three islands in the Gulf was published in various editions in Strasbourg between 1522 and 1547 by C. Ptolemy. Certain editions of this map were coloured, but there is no consistency in this colouring, which appears to be solely for decorative reasons.²⁵

After this map was published, a great many more were published in the sixteenth century, the seventeenth century, the eighteenth century and the nineteenth century, by different authors in various places of publication such as London, Paris, Amsterdam and Berlin. All showed the three islands in different delineations, some gave the islands the colour of an Iranian province, others coloured them as an Arabian province. Yet others did not colour them in relation to either of the two countries.²⁶ For example, a map containing the islands drawn by Niebuhr, a captain of engineers in the Service of the King of Denmark, during his trip to the Arabian/Persian Gulf in 1761, was without colours. Neither did he mention to whom the islands belonged.²⁷ Some authors placed the islands in various locations. Others

²⁴ - See below, P.39.

²⁵ - M.E. Bathurst & Northcutt Ely, *Sharjah's Title to the Island of Abu Musa*, Vol.III, Submitted to His Highness Shaikh Khalid bin Mohamed Al-Qasimi Ruler of Sharjah and its Dependencies, (1971), P.12.

²⁶ - Ibid. P.12-48.

²⁷ - See the map in M. Niebuhr, *Travels Through Arabia, and other Countries in the East*, translated into English by Robert Heron, Vol.II, (1994), P.136.

delineated them as being near the southern coast (the UAE coast). Yet others delineated them as being near the northern coast (the Iranian coast). Another problem is that in some maps the three islands were not named.²⁸

In 1818 Captain Robert Taylor of the 3rd Regiment of the Bombay Native Infantry, an assistant political agent in Turkish Arabia, set down brief notes containing historical and other information of the three islands. In these notes he described Abu Musa and the two Tunbs, their location and levels.²⁹

In 1830 Captain George Barnes Brucks, of the Indian Navy, prepared a memoir describing navigation in the Arabian/Persian Gulf. Contained in this was a general geographic description of the three islands, Abu Musa and the two Tunbs, without mention of ownership.³⁰

Another early mention of the three islands is in the India Directory, containing directions for sailing to and from the East Indies, written in 1836 by James Horsburgh. He was a corresponding member of the Imperial Academy of Sciences, St. Petersburg and of the Royal Society of Northern Antiquaries, Copenhagen, and Hydrographer to the Honourable East India Company. In the Directory he defined the three islands and the location of water on them. He said that they had no inhabitants and that the Prince of Wales was a cruiser anchored near them.³¹

The Persian Gulf Pilot, compiled by Captain C.G. Constable and Lieutenant A.W. Stiffe, late of H.M. Indian Navy, in 1864, mentioned the three islands, stating

²⁸ - Bathurst & Ely, op. cit., P.12-48. These maps also mention the three islands with names near to their actual names. In other cases they mention them with strange unrecognized names, as Baman or Romosa to Abu Musa, Thumb or Tombe to Greater Tunb, and Banitonb or Petombo to Lesser Tunb. For more detail on the many names of the three islands shown in the maps, see the list in, Ibid. P.77-9.

²⁹ - In this, Captain Taylor called Abu Musa 'Bomosa' and said it was an uninhabited island; see IMBG, Vol.1, 1798-1835, P.257-272.

³⁰ - Ibid. P.792-3.

³¹ - Ibid. Vol.2, 1836-1864, P.15-6.

that they were barren and uninhabited, were without water, and were visited by fishing boats from Sharjah.³²

3.3.2. *History of the three islands prior to 1887*

As discussed in chapter one, before the British intervention in the Arabian/Persian Gulf in the early 1800s, an Arab tribal federation known as the Qawasim dominated both sides of the lower Gulf and the islands in between from its main bases at the town of Lingah on the Iranian coast and Ras al-Khaimah and Sharjah on the Arabian side.³³

By 1760 the Qawasim had evidently established a base at Lingah after the death of Nadir shah in 1747. Such historical considerations led Laithwaite from the India Office to write:

It is not clear whether any effective dominion had been exercised by Persia in the islands of Tamb, Abu Muse and Sirri prior to 1750. It seems entirely clear that no effective dominion was exercised in any of them by her between that date and the seizure of Sirri in 1887. In the intervening period, if not from a much earlier date, the islands were apparently part of the hereditary estates of the Jowasimi Arab Shaikhs, the Shaikhs on the Arab shore having an equal interest with those on the Persian littoral [at Lingah].³⁴

The first British recorded evidence regarding Qawasim tribal ownership of the three islands was a letter from Shaikh Sultan bin Saqar, ruler of Ras al-Khaimah to Colonel Pelly, Political Resident at Bushire in December 28, 1864:

Last year, I informed you of the interference of the Dubai people in regard to Abu Musa island and of their taking their horses and camels there. This island belongs to me. Tunb, Abu Musa and Sir [Bu Nair] belong to me from the time of my forefathers. No one went there without my permission ...It is well known from olden times that the islands, [i.e., Abu Musa, Tunb and Sir] belong to me. Sirri belongs to the Qawasim of Lingah, Henjam to Seyid Theweini and

³² - Ibid. P.681-2.

³³ - See Lorimer, op. cit., Vol.I, Part 1, Historical, (1915), P.631-2.

³⁴ - Status of the Islands of Tamb, Little Tamb, Abu Muse and Sirri, August 24, 1928, ABPD, Vol.13, 1853-1957, P.80. Also see the same documents in IMBG, op. cit., Vol.7, 1920-1930, P.332.

Farur to the Maraziks. If you make inquiries about this [i.e. his statement] you will find it correct.³⁵

In 1869, several years after Shaikh Sultan's death, the Qawasim were divided between the towns of Ras al-Khaimah, Sharjah and Lingah.³⁶ Following this division, the possession of Greater Tunb passed to Ras al-Khaimah, Abu Musa to Sharjah and Sirri to Lingah.³⁷ The British government did not take any action concerning the ownership of the Qawasim islands as it was considered an internal affair.

Shaikh Khalifah bin Saeed, the ruler of Lingah, evidently was aware of the inclusion of Greater Tunb within Ras al-Khaimah territory. In 1871, when Shaikh Humaid bin Abdullah, ruler of Ras al-Khaimah, complained to Shaikh Khalifah about unauthorized landings on Greater Tunb by dependents of Qawasim at Lingah, Shaikh Khalifah replied:

After compliments -as regards your last letter, in which you mention about the going of the Busmaithis to the island of Tunb, my brother, the Busmaithis are your friends and party, and they are under your orders; but you should prohibit the people of Dubai, Ajman and Umm al-Qaiwain and Bassidore who all go to that place, while the Busmaithis are under your orders.³⁸

In October 1874 a change took place in the government of Lingah which, according to Lorimer, was still a tribally administered Arab principality, in consequence of the death of Shaikh Khalifah bin Saeed.³⁹ Friendly relations and the old understanding

³⁵ - IOR, R/15/1/246, Letter from Sultan bin Saqr dated 28 December 1864 to Political Resident in the Gulf.

³⁶ - Ras al-Khaimah was ruled by Shaikh Humaid bin Abdullah from 1869-1900, Sharjah by Shaikh Salim bin Sultan from 1868-1883, and Lingah by Shaikh Khalifah bin Saeed from 1868-1874.

³⁷ - Vinson & Elkins, op.cit., P.3.20. There is a different account of this division in 1875 from Lieutenant Fraser, Assistant Resident in the Persian Gulf, he was informed by Mirza Abod Kasim that some 40 years or more earlier the Qawasim apportion i.e. the Greater Tunb, Nabyan Faroor, Sirri and Farur to the Chief of Lingah. See Ibid. P.3.19. Also, M.M. Abdullah, *Dawlat al-Imarat al-Arabiah al-Mutahidah wa Jiranha (UAE and its Neighbour)*, (1981), P.383.

³⁸ - IOR, R/15/1/246, Letter dated 27 November 1871 from the Ruler of Lingah Khalifah bin Saeed to the Ruler of Ras al-Khaimah Humaid bin Abdullah.

³⁹ - Lorimer, op. cit., Vol.I, Part II, Historical, P.2063.

over Greater Tunb were evidently reestablished between the new ruler of Lingah Shaikh Ali bin Khalifah,⁴⁰ Shaikh Khalifah's young son, and his old relative, Shaikh Humaid bin Abdullah ruler of Ras al-Khaimah. Thus, when disputes arose again in late 1876 concerning the unauthorized visits to Greater Tunb by the Busmaithis, Shaikh Ali wrote a letter in January 1877 to the ruler of Ras al-Khaimah:

You write about the Busmaith people, that you wanted me to prohibit them going to the island of Tunb, where they do various damages, because the said island was your territory and that there was copious correspondence between you and my father, and that the latter prohibited them from going there. This is a fact, and I am satisfied that the Island of Tunb is a dependency of the Qawasim of Oman; and we have no property there and no interference, except with your consent; since I considered the subjects and territories as one, I assumed the authority of giving them permission to go there, but now as you are displeased, and you want that they should be prohibited, I will prohibit them, and you will give satisfaction, and I hope that God may preserve you as a proper representative of all who have passed away.⁴¹

3.3.3. The early beginning of the dispute in 1887

The dispute between the Qawasim tribe and Iran over the three islands started after Iran conquered Lingah on 15 September 1887 and occupied Sirri, a Qawasim island which was indisputably administered by the Lingah Shaikhs. Within a few days, the Iranian government erected a flag-staff and hoisted the Iranian flag on Sirri island. At the same time the group who had erected a flag-staff on Sirri proceeded to Greater Tunb to inspect it and erect a flag-staff, there thereby attempting to bring it also under Iranian sovereignty.⁴²

Iranian officials evidently thought possession of the Lingah mainland entitled them to the possession of all the islands believed to have been administered by the

⁴⁰ - Shaikh Ali bin Khalifah ruled Lingah from 1874 to 1878 after the death of his father.

⁴¹ - IOR, R/15/1/246, Letter dated 28 January 1877 from the Ruler of Lingah Ali bin Khalifah to the Ruler of Ras al-Khaimah Humaid bin Abdullah.

⁴² - Vinson & Elkins, op.cit., P.3.34.

ruler of Lingah. Therefore, the Political Resident of Britain in the Gulf and the Minister at Teheran, inquired from his government whether the islands Sirri and Tunb were under British protection, and whether any action at Teheran was necessary. The government of India replied, "That Sirri and Tamb were beyond the zone of Persian interference, and that the islands belonged to Arab Chiefs under British protection in common with Arabs of the Persian Littoral".⁴³ And Lorimer wrote: "This was the view entertained also by the British authorities, who had always understood that the superintendence over Sirri exercised by the Shaikh of Lingah resulted from his position as a Shaikh of the Qawasim, and not from his tenure of the Persian port and district of Lingah".⁴⁴

On 16 October 1887 Shaikh Saqar bin Khalid, ruler of Sharjah, protested to the Political Resident about the Iranian occupation of Sirri and asked that similar action at Greater Tunb should be prevented.⁴⁵ However, the government of India felt some difficulty in taking any action and, after consultation with the Resident in the Gulf, they agreed that since no overt action have been taken by Iran in the case of Tunb, representations at Teheran should be confined to the question of Sirri.⁴⁶

The Iranian government responded that, for the preceding nine years, taxes had been collected and paid to the Iranian government from both Sirri and Tunb, and that documents in support of this assertion were with the Bushire governor. When approached by the Political Resident the Bushire governor declared he had no documents.⁴⁷

⁴³ - See ABPD, op.cit., Vol.13, P.80.

⁴⁴ - See Lorimer, op. cit., Vol.I, Part II, Historical, P.2066.

⁴⁵ - IMBG, op. cit., Vol.7, 1920-1930, P.333.

⁴⁶ - Ibid.

⁴⁷ - Ibid.

Shaikh Saqar bin Khalid, ruler of Sharjah at this time, was also contacted by the British Residency; he told the Residency's Agent in Sharjah that there were no inhabitants on Tunb, no village and no fishermen paying any taxes, and he supported this with three letters from Chiefs of Lingah, admitting the Chief of Sharjah's ownership of Tunb.⁴⁸

The British government could not convince the Iranian government that the Qawasims of Lingah were governing the island of Sirri within their capacity as Shaikhs of Qawasim, and not as Iranian governors. Therefore, the British government agreed to facilitate the progress of the negotiations with the Iranian government in August 1888, to accept the Iranian occupation of the island of Sirri.⁴⁹ Despite this, the Qawasim Shaikhs did not refrain from demanding their right of the return of the island under their control.

3.3.4. Temporary Iranian occupation of Abu Musa and the Greater Tunb islands in 1904

After Iran occupied Lingah, much of the trade left to the opposite side of the Gulf, because of the harassment by the Iranian Imperial Customs towards the Lingah inhabitants. Thereafter, some Lingah merchants began to suggest that Abu Musa island should be made a port of call by the British steamship companies.⁵⁰

In 1903 the government of India was concerned that Iran might attempt to annex Abu Musa or Greater Tunb. It therefore advised the Shaikh of Sharjah to hoist his

⁴⁸ - ABPD, op. cit., Vol.13, P.81.

⁴⁹ - Ibid. P.82. The British and Iranian governments resumed discussions regarding Iran's claim to Sirri in 1894. The British government failed to come to a satisfactory solution of the problem, and the island has continued to be occupied by the Iranians until today-despite all the assurances made by the British Resident at that time, Colonel Wilson, and those who succeeded him between 1897-1955 on the ownership of the island by the Al-Qawasim tribe. Despite this, the Iranian government has no proof of its ownership of the island. See Vinson & Elkins, op. cit., P.3.43-3.44.

⁵⁰ - See Lorimer, op. cit., Vol.1, Part I, Historical, P.745.

flag on both islands, and this he did in the summer of 1903. This precaution proved necessary because at the beginning of April 1904, Belgian employees of the Iranian customs authorities removed the Qawasim flags from the islands of Abu Musa and Greater Tunb, dismantled the Sharjah flag staffs, hoisted the Iranian flag in their place, and left two Iranian customs guards on both islands.⁵¹ Lorimer explained:

There was reason to believe that the action taken by the Persian government had been prompted by the Russian Legation at Tehran, who ...were apprehensive of measures on the part of His Britannic Majesty's government for the consolidation of their position in that quarter, possibly by the occupation of fixed points.⁵²

This action by the Iranian government led to an immediate protest from the Shaikh of Sharjah, who appealed to the British government to take the necessary steps to prevent such interference in his territory. Therefore, the Viceroy of India proposed that a gun-boat be sent with a representative of the Shaikh of Sharjah to haul down the Iranian flag, reinstate the Qawasim flag, and remove the Iranian guards to Iranian territory.⁵³ However, they decided to give the Iranian government the opportunity to withdraw from the islands. On 24 May 1904 the British Minister in Tehran reported to the government of India that the Iranian government, while reserving its right to discuss with the British government their respective claim to Abu Musa and Greater Tunb, had ordered Bushire to remove the Iranian flags and guards from Abu Musa and Greater Tunb.⁵⁴

In a letter to the Iranian Foreign Minister, dated 11 June 1904, the Shah of Iran stated:

Although Iran views the islands as belonging to Iran, Britain has pressured to have both flags lowered at those places, so that the issue may be settled by arbitration. We do, therefore, expect that the

⁵¹ - Ibid.

⁵² - Ibid. Part II, P.2138.

⁵³ - ABPD, op. cit., Vol.13, P.82.

⁵⁴ - Ibid. P.82-3.

British would not allow the Shaikhs to hoist their flag once ours have been removed.⁵⁵

On 14 June 1904 the Iranian flags were duly removed from the two islands, and a few days later the Qawasim flag was replaced on both islands by the ruler of Sharjah.⁵⁶ The Iranian government noted, though, that it considered the two islands as its own property, and suggested that neither party hoist flags in the two places pending the settlement of the question.⁵⁷

The British Minister promptly replied that although he would be willing to transmit any proofs that the claims of Iran to the islands outweighed those of the Shaikh of Sharjah, he could not agree to the suggestion that the Shaikh of Sharjah be prevented from rehoisting his flags on the islands. He pointed out that the British government had made no reciprocal request regarding the Iranian occupation of Sirri. The Minister concluded his reply by explaining:

The position would have been different if the Shaikh of Sharjah had removed an existing Persian flag from Tumb and Abu Musa; what he did was to hoist his own flag upon the islands, which were not yet formally occupied by any other government, and he has the right to fly it as the first occupant until his lawful possession of these islands is disproved.⁵⁸

However, no serious attempt was made by the Iranian government to produce proof of Iran ownership. Lorimer explains "that the Persian government was deterred from urging their claims to the two islands by British intimations to them that, if it persisted, the claim of the Shaikh of Sharjah to Sirri might be revived and supported by the British government".⁵⁹ The Iranian government complained to the British

⁵⁵ - Quoted in D.H. Bavand, *The Historical, Political and Legal bases of Iran's Sovereignty over the Islands of Tumb and Abu Musa*, (1994), P.72.

⁵⁶ - Lorimer, op. cit., Vol.I, Part I, Historical, P.746.

⁵⁷ - IMBG, op. cit., Vol.7, 1920-1930, P.335.

⁵⁸ - ABPD, op. cit., Vol.13, P.83.

⁵⁹ - Lorimer, op. cit., Vol.I, Part II, Historical, P.2138.

government in 1905 about the erection of new buildings at Tunb by the Shaikh of Sharjah. Accordingly, the British government investigated this issue and found it to be baseless.⁶⁰

3.3.5. From 1912 to 1948

In the beginning of 1912 the Qawasim exercised sovereignty more clearly over the three islands; the Shaikh of Sharjah permitted the British government to erect a lighthouse on Greater Tunb island,⁶¹ after the Political Resident in the Gulf, Sir Percy Cox, was granted permission by the Shaikh subject to an assurance that his rights of sovereignty were not affected.⁶²

In February 1913 the Iranian Foreign Office raised the question with the British Minister at Tehran, urging that the ownership of the island was contested. However, Sir Percy Cox replied to the Iranian Foreign Office-

that he had recently made it clear to the Persian Governor of the Gulf Ports that the ownership of Tomb was not open to question, and since the correspondence of 1905 the subjects of the Shaikh of Sharjah and his flag have remained established on the island; that if the question was now reopened His Majesty's Government would no doubt revive the question of Sirri; but that a flat refusal to discuss it would probably be best.⁶³

This answer decided the Iranian government not to press the claim, and the lighthouse was constructed at Greater Tunb on 15 July 1913.⁶⁴

Another exercise of Qawasim sovereignty over the three islands was established in early 1923, when the Shaikh of Sharjah agreed to give Messrs F.O. Strich a

⁶⁰ - ABPD, op. cit., Vol.13, P.83.

⁶¹ - Ras al-Khaimah and Sharjah were united from 1900 until 1921, when they each assumed independence as two Emirates. The islands of Tunb were considered as being owned by Ras al-Khaimah, whereas Sharjah kept the island of Abu Musa. For more details see A.J. Al-Tadmori, *al-Juzur al-Arabiah al-Thalath (The Three Arabian Islands)*, (1995), P.109.

⁶² - ABPD, op. cit., Vol.13, P.83.

⁶³ - Ibid. P.84.

⁶⁴ - Ibid.

concession to produce red oxide at Abu Musa for five years.⁶⁵ Several days later, a note asserting Iranian rights over both Abu Musa and Greater Tunb islands⁶⁶ was addressed to the British Minister in Tehran. Sir P. Loraine, the Minister concerned, adopted an uncompromising attitude and returned the note to the Prime Minister with a strongly worded covering letter. No reaction was taken by the Iranian side concerning the letter of the British Minister.⁶⁷

In 1925, however, Iran more forcefully asserted its claim; the Iranian authorities sent a launch to Abu Musa which inspected the red-oxide deposits and removed one bag. The British Minister in Tehran protested. The Iranian government replied that Abu Musa belonged to Iran. The action was taken by the Minister, who was reminded of the 1923 correspondence, and subsequently warned privately that persistence in the Iranian claim would make it necessary “to request the government of India to dispatch a ship of war to Abu Musa to uphold the rights of the Shaikh of Sharjah”. The Iranian government withdrew, and the customs authorities were instructed “not to take any steps in Abu Musa or Tamb pending reply from Ministry of Foreign Affairs regarding status of these islands”.⁶⁸

⁶⁵ - See IMBG, op. cit., Vol.7, 1920-1930, P.39. This was the second contract signed by the Shaikh of Sharjah to the red-oxide concession on the island of Abu Musa. The first one was in 1898, signed by three persons including a naturalized British-Indian subject. In 1906 they transferred the red-oxide concession to Messrs Wonckhaus, who were the agents in the Arabian/Persian Gulf of the Hamburg-American Line. Therefore, the Shaikh of Sharjah cancelled the contract. There was no Iranian objection to this agreement. For more details of the history of the first contract, see Ibid. Vol.6, 1903-1923, P.159.

⁶⁶ - The assertion of Iranian rights over Abu Musa and Greater Tunb came after the Iranian concessionaire of the Hormuz red-oxide concession, Moin al-Tujjar, a person of great wealth and considerable political influence, urged the Iranian government to raise the Iranian claim to Abu Musa coupled with that to Bahrain, and refer both to the League of Nations. See ABPD, op. cit., Vol.13, P.84.

⁶⁷ - Ibid.

⁶⁸ - See the report from Sir P. Loraine to Sir Austen Chamberlain on 31 May 1926, in IMBG, op. cit., Vol.7, 1920-1930, P.144-5.

In July 1928 the Iranian government again asserted its claim of ownership of the three islands; an Iranian customs launch seized and detained an Arab dhow approaching Greater Tunb.⁶⁹ After two official notes of protest from the British Chargé d’Affaires in Tehran to the Iranian Minister Foreign Affairs, the release of the dhow and passengers in early August 1928 was achieved.⁷⁰ The British Chargé d’Affaires officially protested in his 4 August 1928 letter that Greater Tunb was an Arabian island. The Iranian Minister of Foreign Affairs replied in a note dated 21 August that:

The islands of Tunb and Abu Musa are inseparable parts of Persian territory and that the Persian government does not in any way recognize [the Shaikh of Ras al-Khaimah] as independent and the owner of the said islands.⁷¹

In 1929 the British government tried to sign a treaty with the Iranian government to lease Henjam island and, during the negotiations of the Anglo-Iranian treaty from 1929 to 1935, the question of ownership of the three islands was raised. According to the proposed treaty, the British government suggested that the Iranian government agree to renounce its claims upon the Arabian islands in the Gulf. In return, the British government would recognize the Iranian ownership of the island of Sirri. The Iranians evidently rejected this proposal.⁷² Subsequently, the British government asked the Shaikh of Ras al-Khaimah if he would consider the sale of Greater Tunb to Iran. After discussion between the Shaikh of Ras al-Khaimah and the Shaikh of Sharjah, the former replied that he would not agree to sell the island at any price.⁷³

⁶⁹ - ABPD, op.cit., Vol.13, P.85.

⁷⁰ - For more details about the seizure of an Arab dhow at Greater Tunb, see IMBG, op. cit., Vol.7, 1920-1930, P.297-9.

⁷¹ - See the translation, Ibid. P.344.

⁷² - For more details on the Anglo-Iranian negotiations over Henjam island, see IMBG, op. cit., Vol.8, 1930-1933, P.2-82 and P.365-556.

⁷³ - Ibid. Vol.7, 1920-1930, P.641.

On the other hand, Sir Robert Clive, the British Minister in Tehran, had an unsatisfactory conversation with Teymourache, the Iranian Minister of Court, in which he offered to abandon the claim to Abu Musa if Iran could be given Greater Tunb. Sir Robert Clive replied that this island did not belong to Great Britain, and the Shaikh who owned Greater Tunb declined to part with it.⁷⁴

Subsequently, the Iranian Minister of Court changed his position; he indicated that Iran would be content with a long lease of Greater Tunb for fifty years, paying over to the Shaikh whatever Britain paid for the lease of Henjam, and would allow the Shaikh to maintain gardens on the island and exempt him from payment of customs duties.⁷⁵ The proposition was discussed with Shaikh Sultan bin Salim,⁷⁶ ruler of Ras al-Khaimah, in January 1931. The ruler was evidently willing to enter into such an arrangement, but only on several conditions. These conditions reportedly were as follows:

- 1- His flag should continue to fly and his representative should remain.
- 2- His subjects should not be interfered with without reference to himself.
- 3- Persian customs vessels should not come to the Oman Sea to search Arab dhows whether belonging to his subjects or to his neighbouring Shaikhs.
- 4- Absconding divers who were in debt should be handed over.
- 5- Merchandise imported into the island for his personal requirements should be free of duty and also foodstuffs imported by inhabitants.
- 6- The annual rental was to be paid in advance.
- 7- Any flag-staff erected by the Persian government should be over a building and not on the ground.
- 8- The conditions should be enforced by the British government.⁷⁷

⁷⁴ - Ibid. P.645.

⁷⁵ - Ibid. P.645-6.

⁷⁶ - Ruler of Ras al-Khaimah from 1919 to 1948.

⁷⁷ - IMBG, op. cit., Vol.8, 1930-1933, P.100.

Consequently, as Britain felt that Iran could not agree to such restrictions and, because of a rupture in the treaty negotiations, the Shaikh's answer was not communicated to the Iranian government.⁷⁸

During 1933 and 1934, Iran again acted upon its claim of ownership by visiting Greater Tunb several times. The first such visit was in summer 1933, when an Iranian naval force landed on Greater Tunb to inspect the lighthouse. In 1934, on April 26th, Iranian officials landed and interrogated the Rulers agent. After that, on 13 September, the Iranian sloop Chahrokh landed a party at the island and interrogated the Shaikh of Ras al-Khaimah's agent, and on 28 August the Iranian sloop Palang searched an Arab dhow within the territorial waters of Greater Tunb.⁷⁹ Of course, this action by the Iranian government was not acceptable to the British government who delivered a solemn warning to the Iranian government to the effect that in the event of further Iranian interference at Tunb it would, in the last resort, be defended by force.⁸⁰

In 1935 the Iranian government brought up the question of concessions over the islands; the Iranian Minister of Foreign Affairs protested on 28 March to His Majesty's Minister, about the agreement made between Shaikh Sultan bin Saqar ruler of Sharjah and Commander Robert Corbett Bayldon (Gold Valley Ochre and Oxide Company) on 28 January 1935, to grant a concession of red oxide in Abu Musa island.⁸¹ The Iranian Minister considered the action taken by the English

⁷⁸ - Ibid. P.101-3.

⁷⁹ - IMBG, op. cit., Vol.9, 1933-1935, P.284.

⁸⁰ - ABPD, op.cit., Vol.13, P.135. In 1935 the British Foreign Office indicated that this threat of force was communicated to Iran at the highest diplomatic level. This reads in part as follows: "On September 28th, 1934, the Secretary of State made it clear to the Persian Minister that His Majesty's Government regarded the Persian claim to Tamb as quite unfounded, and both he and, on his instructions, Sir R. Hoare, warned the Persian Government that any Persian attempt at aggression against Tamb would be resisted if necessary by force". See IMBG, op. cit, Vol.10, 1935-1937, P.124.

⁸¹ - See the text of agreement in IMBG, op. cit., Vol.10, 1935-1937, P.135.

company in obtaining the concession and in deriving profit from the natural resources of the island to be illegitimate and to amount to the misappropriation of the property of others.⁸² The British government replied to Iran as follows:

His Majesty's Government are unable to accept the Persian protest or to agree that Persia has any ground for complaint in regard to the grant of red oxide concession on Abu Musa by the Shaikh of Sharjah. As the Persian Government are aware His Majesty's Government have never admitted the Persian claims to this island or recognised that she has any rights in respect of it and they are not prepared to do so now.⁸³

3.3.6. From 1948 to 1968

At the end of 1948, the Iranian government raised claims to Abu Musa and Greater Tunb; they instructed the Counsellor of the Iranian Embassy in London to take up with the British Foreign Office the question of ownership of the two islands. In addition, the Iranian government wished to undertake a reorganisation of their administration to establish small administrative offices on these two islands, which they claimed to be under Iranian sovereignty. Therefore, the Iranian Counsellor wanted to approach the British government in a friendly manner before the Iranian government took any action and to make sure that the British government had no objection.⁸⁴ The British answer was as previously, i.e. that the ownership of these islands belonged to the rulers of Sharjah and Ras al-Khaimah.

On 23 September 1949, the Iranians placed a flag-staff on Lesser Tunb, and intended to establish a customs house on Greater Tunb.⁸⁵ In October 1949, the British government sent a ship to remove any Iranian flag-staff found at Lesser Tunb. The Iranians did not try to reinstate their flag staff after it was dismantled.⁸⁶

⁸² - Ibid. P.161.

⁸³ - Ibid. P.159.

⁸⁴ - IMBG, op. cit., Vol.13, 1948-1949, P.455.

⁸⁵ - ABPD, op. cit., Vol.13, P.261.

⁸⁶ - IMBG, op. cit., Vol.15, 1950-1951, P.601.

In the mid-fifties, diplomatic correspondence was resumed concerning proposed solutions for the ownership of the three islands. Among the British proposals was that the ruler of Ras al-Khaimah should sell the two Tunbs islands to Iran for an agreed price, and that the ruler of Sharjah should give up his legitimate right of ownership of the island of Sirri. In return, Iran should give up its claim to the islands of Abu Musa and Bahrain. This was built on a hint made by the Iranian Minister of Foreign Affairs to the British Ambassador that Iran would be happy to give up forever its claims in Bahrain, if there was a satisfactory deal for Iran.⁸⁷

The ruler of Sharjah showed the British Resident great interest in the proposed deal. He said he was ready to give up his rights to Sirri, given that the Iranians would give up their claims to Abu Musa. On the other hand, the ruler of Ras al-Khaimah preferred to lease the two islands for one million Rupees, and to keep his rights in oil and any mineral exploration in the islands. He also wanted to keep the lighthouse. He also expected the cancellation of all taxes to be paid by his subjects.⁸⁸ The Iranian government did not show interest in the deal as it was not ready to give up its claim to Bahrain,⁸⁹ therefore, the British government could not solve the dispute.

Iranian military activities in the Arabian/Persian Gulf escalated during the sixties, in an attempt to irritate the British government. The Iranians warned also that they would establish Iranian sovereignty over the three islands by any means.⁹⁰ In 1961 an Iranian helicopter landed on the island of Greater Tunb. Photographs were taken of the island and the lighthouse, and workers at the lighthouse were

⁸⁷ - Ibid. Vol.17, 1954-1958, P.241.

⁸⁸ - Ibid. P.246.

⁸⁹ - Ibid. P.282.

⁹⁰ - ABND, Vol.1, 1963, P.624.

questioned.⁹¹ Despite all Iranian efforts to convince the British government to establish Iranian control over the islands, the British government protested, on behalf of the ruler of Ras al-Khaimah, because of the Iranian breach of Arabian sovereignty on the island. Despite all the diplomatic efforts, the British kept the same attitude and opinion, i.e. that the three islands were owned by the rulers of Sharjah and Ras al-Khaimah. This attitude continued until the British announcement of its withdrawal from the Gulf.

3.3.7. *The British withdrawal from the Gulf*

On 16 January 1968 the British announced that they had decided to withdraw their forces from the Arabian/Persian Gulf by the end of 1971. The reasons for the withdrawal were economic, political and military.⁹² The British government wanted to solve some outstanding problems in the Gulf region before withdrawal. One of these problems was the three islands which Iran was trying to occupy. As the Shah told the Secretary of State on 2 May 1963; “all that Iran desired was that we should maintain our position in the Gulf”.⁹³

In the beginning of 1969 the British attitude became favourable to Iran. They proposed solutions in favour of Iran, such as giving Iran a few islands for the Iranian abandonment of her claim to Bahrain. This was despite the previous British insistence that ownership of the islands belonged to the Qawasim rulers. And such it was stated in the confidential diary of the Iranian Minister of Royal Court, Asadollah Alam, on 17 February 1969:

⁹¹ - W.H. Al-Athami, *al-Naza bina Dawlat al-Imarat al-Arabiah wa Iran hawla Juzur “Abu Musa wa Tunb al-Kubra wa Tunb al-Sughra” fi al-Watheq al-Britaniah* (**The Dispute between the UAE and Iran over Islands Abu Musa, Greater Tunb and Lesser Tunb in the British Document**), (1993), P.174.

⁹² - See H.H. Al-Alkim, *The Foreign Policy of the United Arab Emirates*, (1989), P.6.

⁹³ - ABND, op. cit., Vol.1, 1963, P.619.

This afternoon, the British ambassador, Sir Denis Wright, came to see me ... In strict confidence he told me that the Islands of Tunbs are certain to be handed over to Iran. The British have warned the Shaikh of Ras al-Khaimah the islands lie on our side of the median line and that, unless he comes to some sort of understanding with us, we shall simply take them, legally or if needs be by force. The Shaikh is prepared to make a deal. I then asked about the island of Abu Musa. The ambassador replied that it lies below the median line. I told him that we are sufficiently powerful to disregard the line, we joked for a while. More seriously he expressed concern that our policy in the Gulf may lead to trouble with the Arabs. 'To hell with it', I said. 'What have the Arabs ever done for us ? If only they would stop all this nonsense, agree to pay for the defence of the Gulf, and let us get on with the work'. The ambassador questioned the extent to which the Arabs will allow us a free hand. After all they persist in describing it as the 'Arabian' Gulf. I replied that we are prepared to draw up a fifty years defence agreement with them, and that all in all it will be much the same as the agreement they once had with the British.⁹⁴

After about one month, the British Ambassador repeated what he had previously said to the Iranian Court Minister. Asadollah Alam said in his diaries that on 19 March:

The British ambassador met me in the afternoon. We discussed Bahrain and the Gulf islands which he was keen to present as two distinct issues. He told me that Tunbs will be easy for us to recover but not Abu Musa, which lies too close to the Arabian peninsula. I replied that this didn't alter Iran's rights nor entitle the Arabs to hold on to Iranian territory; territory which HIM [His Imperial Majesty] will never abandon. The ambassador suggested that a solution to the problem of Bahrain will almost certainly encourage the establishment of a Federation of Arab Emirates, at which stage Iran might well occupy Abu Musa in the interests of joint security in the Gulf. We can depend on support from the British, should this happen.⁹⁵

The attitude of the British Ambassador encouraged Iran to impose her might over the Arabian/Persian Gulf, and warned that she was intending to impose her control over the islands, even if force had to be used. This led to an escalation of Iranian statements concerning the three islands and the necessity of bringing them under

⁹⁴ - A. Alam, *The Shah and I: the confidential diary of Iran's Royal Court 1969-1977*, ed. A. Alikhani, (1991), P.34.

⁹⁵ - Ibid. P.43.

Iranian control. The Shah, in an interview with the Indian magazine *Blitz*, confirmed this when he said, “in the absence of a peaceful solution Iran would have no alternative but to take the islands by force”.⁹⁶

After two years of strenuous and delicate diplomacy, six of the Trucial States agreed to join together in a federation to be called the United Arab Emirates. Ras al-Khaimah declined to join the proposed federation. An immediate problem faced the proposed federation, however, as Iran had given diplomatic notice that she would not recognize the union unless it yielded to her the Tunb islands and Abu Musa.⁹⁷

The British government appointed Sir William Luce as a special envoy to the Arabian/Persian Gulf to reconcile the differences. On 1 November 1971, he proposed that Ras al-Khaimah and Sharjah concede the three islands to Iran; in return, Iran would pay a large sum of money to the rulers as part of the proposed deal. Shaikh Khalid bin Mohamed ruler of Sharjah and his cousin, Shaikh Saqar bin Mohamed ruler of Ras al-Khaimah, rejected the offer and protested that the British proposals were an infringement of their sovereign rights over the three islands.⁹⁸

The British envoy had in fact succeeded in reaching a final settlement between Iran and Sharjah over Abu Musa island. On 29 November 1971, the ruler of Sharjah, Shaikh Khalid bin Mohamed, announced that he had, apparently reluctantly, come to

⁹⁶ - The Times, 29 June 1971, P.7.

⁹⁷ - See J.I. Al-Rawi, *al-Juzur al-Arabiyyah al-Thalath wa-mawqif al-Qanun al-Dawli min ihtilaliha bi-al-quwah* (**The three Arab Islands and the Attitude of International Law Concerning their Occupation by Force**), (1981), P.55.

It is worth mentioning, that the non recognition of the UAE as a new state by Iran does not legality amount to a decisive argument. For example, the Institute de Droit International emphasised in its resolution on recognition of new states and governments in 1936 that the “existence of new state with all the legal effects connected with that existence is not affected by the refusal of one or more states to recognise”. *Restatement (Third) of Foreign Relations Law of the United States*, Vol.1, (1987), P.77-8. Also see M.N. Shaw, *International Law*, (1991), P.245.

⁹⁸ - See *Al-Khaleej* (**The Gulf**) Newspaper, 1-2 November 1971.

an arrangement with Iran to share sovereignty over Abu Musa⁹⁹ in the face of a clear threat that the island would be taken forcibly should he not comply.¹⁰⁰ By this arrangement Iranian forces would occupy and position themselves in key strategic areas, basically the range of hills in the north of the island. In return, Iran would give £1.5 million a year in aid to Sharjah until Sharjah's annual revenue from any oil discovered reached £3 million.¹⁰¹

In the preface to the Memorandum of Understanding between Iran and Sharjah it is stated that:

Neither Iran nor Sharjah will give up its claim to Abu Musa nor recognize the other's claim. Against this background the following arrangements will be made:-

1- Iranian troops will arrive on Abu Musa. They will occupy areas the extent of which have been agreed on the map attached to this memorandum.

2- (a) Within the agreed areas occupied by Iranian troops, Iran will have full jurisdiction and the Iranian flag will fly.

(b) Sharjah will retain full jurisdiction over the remainder of the island. The Sharjah flag will continue to fly over the Sharjah Police Post on the same basis as the Iranian flag will fly over the Iranian military quarters.

3- Iran and Sharjah recognize the breadth of the island's territorial sea as twelve nautical miles.

4- Exploitation of the petroleum resources of Abu Musa and of the seabed and subsoil beneath its territorial sea will be conducted by Buttes Gas and Oil Company under the existing agreement which must be acceptable to Iran. Half of the governmental oil revenues hereafter attributable to the said exploitation shall be paid directly by the company to Iran and half to Sharjah.

⁹⁹ - In the correspondence relating to the Memorandum, the channel of communication in the arrangement was the British Foreign Secretary, who received a letter from the ruler of Sharjah, dated 18 November 1971, in which the latter confirmed his acceptance of the 'Memorandum of Understanding'. The British Foreign Secretary informed the Iranian Foreign Minister about Sharjah's acceptance of the arrangement. In reply, the Iranian Minister of Foreign Affairs, Abbas Ali Khalatbari, wrote to the British Foreign Secretary on 25 November, "I confirm that my Government accepts the arrangements for Abu Musa as set out in the enclosure to your letter of 24 November 1971". Accordingly, on 26 November, the British Foreign Secretary sent his reply to the ruler of Sharjah, "I refer to your Highness's letter of 18 November in which you asked for confirmation that the Iranian Government, for its part, accepted the arrangements for Abu Musa set out in the Annex to your letter". *Al-Khaleej*, 4 September 1992.

¹⁰⁰ - Ibid. 30 November 1971.

¹⁰¹ - The Times, 30 November 1971, P.6.

5- The nationals of Iran and Sharjah shall have equal rights to fish in the territorial sea of Abu Musa.

6- A financial assistance agreement will be signed between Iran and Sharjah.¹⁰²

Concerning the two islands of Tunb, no settlement was reached.¹⁰³ The governor of Ras al-Khaimah stated, after his meeting with William Luce on 30 October 1971, that the British representative had offered him-if he gave up the two islands to Iran-a yearly payment of £1.5 million to be paid by Iran for nine years, plus 49 per cent of future mineral and oil revenues; however, he had declined the offer.¹⁰⁴

On 30 November 1971, the day before the British treaty of protection was to expire and the United Arab Emirates become independent, the Iranian forces occupied the Greater and Lesser Tunbs.¹⁰⁵ On the same day they landed on Abu Musa without any resistance, because of the previous arrangement. The Ras al-Khaimah police force resisted the invasion. The outcome was that four Ras al-Khaimah policemen and three Iranian soldiers were killed.¹⁰⁶ Iranian forces gave the inhabitants of the island of Greater Tunb the choice of either leaving or remaining and becoming Iranian citizens. All inhabitants left for Ras al-Khaimah.¹⁰⁷

The ruler of Ras al-Khaimah immediately sent letters of protest to the Council of the League of Arab States and to several Arab governments, requesting

¹⁰² - *Al-Khaleej*, 4 September 1992. Also see H M. Al-Baharna, *The Arabian Gulf States*, (1975), P.345. Also see M.R. Dabiri, Abu Musa Island: A Binding Understanding or Misunderstanding, IJIA, Vol.V, Nos.3&4, Fall/Winter 1993-1994, P.577.

¹⁰³ - The Times, 30 November 1971, P.6.

¹⁰⁴ - *Al-Khaleej*, 2 November 1971, P.1.

¹⁰⁵ - After the Iranian forces occupied the islands, Britain decided not to try to recover the islands from Iran. The reason was that the British forces would have had to leave by the end of the British-Ras al-Khaimah defence treaty on 30 November. A diplomat said: "if Britain sent in troops today, under the treaty, they would have to be withdrawn tomorrow", the Glasgow Herald newspaper, 1 December 1971, P.1.

¹⁰⁶ - *Al-Khaleej*, 1 December 1971. Also, the Glasgow Herald, 1 December 1971, P.1. Sir Alec Douglas-Home, Secretary of State for Foreign and Commonwealth Affairs, said to the House that "one Arab policeman and three Iranians were killed". See the Times, 7 December 1971, P.9.

¹⁰⁷ - Interview with Mohamed A. Abu Al-Qasm and his son Abdul Rahman, from Greater Tunb island, on 18 September 1993.

diplomatic assistance in the submission of the issue to the United Nations and the United Nations Security Council.¹⁰⁸

The United Nations Security Council met on the 9 December 1971 to discuss the situation. In addition to Iran, six Arab states joined the Security Council session.¹⁰⁹ Because Ras al-Khaimah was not yet a member of the United Nations, the Permanent Representative of Iraq to the United Nations was the Shaikhdom's primary spokesman. Although the history of the territorial dispute was adequately briefed by the Iraqi representative, and the representative of Iran had a full opportunity to defend the charge, the United Nations Security Council deferred consideration of the matter to a later date to allow 'efforts of quiet diplomacy to work and to materialize'.¹¹⁰ The situation remained unchanged, and the Iranian occupation of the islands continued. After Ras al-Khaimah joined UAE in 1972, diplomatic efforts on an international scale continued the claim to restore the islands to their legitimate owners until the Islamic revolution deposed the Shah in January 1979.

3.3.8. Development of the dispute over the three islands after 1979

The question of sovereignty over the three islands was again raised in 1979 after the Iranian revolution. The government of the UAE became optimistic about the possibility that the new regime might return the islands to their owners. According to the statements made by the officials in the new Iranian regime, they did not accept the injustices caused by the Shah's regime, and said that the Iranian government-at the earliest opportunity-would do an overall review of all measures and treaties

¹⁰⁸ - Al-Tadmori, op. cit., P.188.

¹⁰⁹ - The Arab states in attendance at the UN Security Council session included Algeria, Iraq, Kuwait, the Libyan Arab Republic, the People's Democratic Republic of Yemen and the UAE. SCOR, 26th Year, 1610th Meeting: 9 December 1971, P. 4.

¹¹⁰ - Ibid. P.24.

taken by the previous government and there was a chance that it would cancel these measures. It was expected that Iran would return Abu Musa, Greater Tunb and Lesser Tunb which were occupied by the Shah.¹¹¹

These directions in the new Iranian regime brought optimism to the UAE government that the case of the islands would be resolved. Accordingly, the governor of Ras al-Khaimah contacted the new Iranian government to remind them of the Shah's occupation of the Tunbs islands and to ask them to return the islands to their owners.¹¹² In addition, the Iraqi government supported the UAE government in the claim for the three islands from Iran. This support came from the Iraqi Ambassador to Lebanon in 1979. He stated that the return of the three islands to Arab sovereignty was set as one of the three conditions for future Iraqi relations with the new Iranian regime.¹¹³

At the onset of the Iran-Iraq war in 1980, Iranian inflexibility became clear concerning the keeping of the islands and the refusal to have any discussion on their sovereignty. The first president of the Islamic Republic of Iran, Abolhassan Bani Sadr, stated on 24 March 1980, that Iran would not evacuate or return the three Arab islands and that the Arab countries Abu Dhabi, Qatar, Oman, Dubai, Kuwait, and Saudi Arabia were connected with the United States and were not independent.¹¹⁴

The Iraqi Foreign Minister's response to the Bani Sadr statement, in his letter to UN Secretary General on 2 April 1980, stated that:

Iraq would like to emphasize its non recognition of Iran's illegal occupation of the three Arab islands and the consequences that may

¹¹¹ - Al-Alkim, op. cit., P.159.

¹¹² - *Al-Fajer* newspaper, 2 October 1981, Also see the text of the letter from Shaikh Saqar bin Mohamed Al-Qassimi, ruler of Ras al-Khaimah to the Iranian Leader, Ayatollah Khomeini, of 6 February 1979, Al-Tadmori, op. cit., P.209.

¹¹³ - *Al-Nahar al-Arabi wa al-Dawli*, 28 November 1979.

¹¹⁴ - SCOR, 35th Year, Doc. S/13918, 1980, P.35.

ensue from such occupation, and demands the immediate withdrawal of Iran from those islands.¹¹⁵

In May 26, the former Iranian Foreign Minister sent a letter to the UN Secretary General, in which he argued that the Iranian occupation of 1971 “is nothing but reassertion of Iran’s sovereignty over part of its territories”.¹¹⁶

On 6 August the government of the UAE protested against the Iranian assertion made at the United Nations. The UAE Minister of State for Foreign Affairs, stated in a letter to the UN Secretary General that the UAE “re-emphasizes its firm attachment to the islands, which form an integral part of the territory of our state, whose sovereign rights thereover are indisputable, and unimpeachable and to reaffirm its readiness to furnish substantive proof to that effect”.¹¹⁷

The UAE government maintained its claim to the three islands during 1980. On the other hand, Iran continued its refusal to negotiate over the islands. It also claimed that the islands were Iranian and that it was going to stay in the islands to prevent their use as American military bases.¹¹⁸

3.3.9. *Iran’s breach of the Memorandum of Understanding*

At the beginning of 1992 the Iranian government breached the Memorandum of Understanding which had been signed with the government of Sharjah regarding the island of Abu Musa in 1971. This was done by the denial of the right of the government of Sharjah to practice its sovereignty over part of the island according to the terms of the Memorandum. The Iranian government asserted sovereignty over the whole of the island. It expelled 60 workers from the island who were working in

¹¹⁵ - Ibid.

¹¹⁶ - Ibid. Doc. S/13987, 1980, P.89.

¹¹⁷ - Ibid. Doc. S/14111, 1980, P.39.

¹¹⁸ - *Al-Ittihad* newspaper, 8 January 1981.

the Sharjah area. A new development took place on 24 August of the same year when the Emirate residents and workers of the island were prevented from leaving in their boat which was taking them to the island.¹¹⁹ The Iranian government justified this practice by reference to its responsibilities for the security of the island according to the 1971 arrangement. It argued that there was a mutual arrangement with Sharjah that its foreign residents had to get an entry permit from the Iranian authorities, but Sharjah officials denied that such an arrangement existed.¹²⁰

Some countries started diplomatic measures to reach a solution. Accordingly, Iran invited the UAE for bilateral negotiations. In their first meeting in Abu Dhabi September 1992, the UAE asked for the following:¹²¹

- 1- The ending of military occupation of Greater Tunb and Lesser Tunb;
- 2- Iran should commit itself to respect the provisions of the 1971 Memorandum of Understanding, with respect to the island of Abu Musa;
- 3- Non intervention by Iran, in any way, in the UAE's practice of its complete sovereignty over its assigned part of the island of Abu Musa according to the Memorandum of Understanding;
- 4- The cancellation of all measures taken by Iran concerning governmental departments and the Emirate and non-Emirate residents in the island of Abu Musa;

¹¹⁹ - *Al-Khaleej*, 25 August 1992. The number of people prevented from entering the island of Abu Musa by the Iranian authorities was more than 100 teachers, workers and their families. They were going to start their work in the school belonging to the Ministry of Education in the UAE. The representative of the government of Sharjah Mohamed Khalifah Bu-Ghanim and citizens who lived on the island were similarly prevented from entering the island. The ship 'Khater' was kept at sea for three days without permission to land on the island. The captain had to return to the port of Khaled in Sharjah as the passengers' suffering was growing.

¹²⁰ - Ibid. 4 September 1992.

¹²¹ - *Al-Wasat*, No.39, 26 October 1992. Also *Qdiat al-Ihtilal al-Irani Li-Juzur Tunb al-Kubra, Tunb al-Sughra, Abu Musa al-Tabainh Li-Dawlat al-Imarat al-Arabiah al-Mutahidah*, op. cit., P.15-16. Also H.H. Al-Alkim, *The GCC States in an Unstable World*, (1994), P.114-115.

5- Determination of a convenient framework to settle the question of sovereignty over the island of Abu Musa within a limited time scale.

The Iranian side refused to discuss the termination of the military occupation of the two Tunb islands. It also refused to take the case to the International Court of Justice.¹²² This resulted in the collapse of the negotiations. After the negotiations came to a dead end because of the inflexible Iranian stand, the Emirate Minister of Foreign Affairs, in his address to the UN Secretary General on 30 September 1992, stated the willingness of the UAE to find a peaceful solution for the case according to Article 33 of the Charter of the UN, with the consideration of the Emirate sovereignty over the three islands.¹²³

The Iranian government breached the Memorandum again on 20 September 1994, when it established an airline linking Abu Musa and Bandar Abbas¹²⁴ in an attempt to enforce its sovereignty over the island. This was followed by the establishment of an Iranian court on the island in 1995.¹²⁵ At the same time, the Iranian authorities prevented the residents of Abu Musa or the UAE government, from building any constructions, even if these were on the part of the island assigned to Sharjah as defined by the Memorandum.

In an attempt from the State of Qatar to mediate between the two countries and bring them to the negotiation table, and to achieve a solution for the islands, a meeting was held in Doha in September 1995 between the representatives of the two countries. However, at this meeting no development to solve the conflict took place. It failed from the beginning because of the insistence of the Iranian delegation to

¹²² - *Al-Shuruq*, Maqazin, 8 October 1992.

¹²³ - Ibid.

¹²⁴ - *Al-Khaleej*, 30 September 1994.

¹²⁵ - Ibid. 8 January 1995.

adhere to their previous stand. They said that they came to Doha to discuss the 1992 disagreements regarding Abu Musa, and not to discuss the ownership of the three islands. On the other hand, the UAE delegation insisted that they went to Doha to discuss a peaceful solution to the conflict over the three islands. Another reason for the failure of the meeting may have been because there was no clear working paper to define what should be discussed by the two countries.¹²⁶

Nonetheless, the protests from the UAE did not prevent Iran from enforcing its sovereignty over the islands. In a later development the Iranian government began the construction of a port on the island of Abu Musa in May 1996.¹²⁷ This one-sided measure on Iran's part, aiming to impose its domination over the island, was no help in the search for a peaceful solution for the conflict.

3.4. Conclusion

It is obvious from the historic review of the islands that sovereignty over them was unknown, as old maps were not clear and contained many contradictions. Neither did those writing on the Arabian/Persian Gulf identify to whom they belonged. This was the case until the British domination of the Arabian/Persian Gulf in 1880. As Laithwaite states:

The history of islands prior to 1750 is obscure; that since that date such authority and such effective occupation as there has been, has its source in the Jowasimi Arabs, who between 1750 and 1820 exercised in the Gulf a maritime control uncontested by Persia.¹²⁸

This is because correspondence between the British naval forces on the Arabian/Persian Gulf and the British government concerning clashes between the

¹²⁶ - Pirouz Mojtahed-Zadeh, Iran and the UAE: Meeting in the dark, MEI, No.515, 15 December 1995, P.18-19.

¹²⁷ - *Al-Ittihad*, 21 May 1996.

¹²⁸ - IMBG, op. cit., Vol.7, 1920-1930, P.338.

British fleet and the Qawasim fleet in the Arabian/Persian Gulf, before signing the General Treaty of Peace in 1820, mentioned that the Qawasim ships used the islands of Abu Musa and Tunb as their base from which they launched their attacks on the British fleet.¹²⁹

Then came the first assurance about the ownership of the islands in a letter from the governor of Ras al-Khaimah directed to Colonel Pelly in 1864 saying that the islands belonged to him. The islands continued to be under the Qawasim sovereignty until its occupation by the Iranian force in 1971.

It is obvious that Iran did not have any history of sovereignty over the islands, that the Iranian claims began after their recovery of Lingah from the Qawasim in 1887 and after their occupation of the island of Sirri. It is also obvious that the Iranian claims for the islands were announced at sporadic intervals, usually with relevance to the importance of the islands at the times of the different claims. The first Iranian claim and occupation of the islands of Greater Tunb and Abu Musa in 1904 was related to the importance of red oxide, and with instigation from the Russian fears of the British domination of the Arabian/Persian Gulf.¹³⁰ Concerning the recent occupation in 1971, Iran has claimed that the islands were under Iranian sovereignty and that it has historic and legal proof of this.

The question which arises is whether the way Iran has practiced her sovereignty over the three islands is legal or not. The next chapter will address this question by examining the ways of territorial acquisition in International Law. I will then look at the situation concerning the three islands to examine the legality of the sovereignty claims of the two disputing parties.

¹²⁹ - See S.M. Al-Qasimi, *The Myth of Arab Piracy in the Gulf*, (1986), P.162.

¹³⁰ - Lorimer, op. cit., Vol.I, Historical, Part I, P.745.

CHAPTER FOUR

The Acquisition of Sovereignty over the Three Islands in International Law

4.1. Introduction

Oppenheim states: “Nowadays, however, the acquisition of territory by a state normally means the acquisition of sovereignty over such territory”.¹ A title to territorial sovereignty is based on the facts which the law recognizes as creating a right. The various modes that international law recognizes as creating title to territorial sovereignty reduce to one common factor and that is the importance, both in the creation of title and of its maintenance, of actual effective control.

The aim of this chapter is to shed light on the legal methods of acquiring sovereignty over territory and, accordingly, we may know the legal aspects of the claims made by the two disputing parties over the ownership of the three islands. Traditional methods of acquiring sovereignty over a territory are explained; these include occupation, cession, and acquisitive prescription. We will concentrate on the use of force to acquire territory and the extent of its acceptance by the international community and courts as a method for acquisition of title to territorial sovereignty. Finally, the concept of historical consolidation of title to gain legal right of ownership over a territory is discussed.

4.2. Some relevant modes for the acquisition of territorial sovereignty

In traditional international law five modes of acquiring territory may be distinguished, namely: occupation, accretion, cession, prescription and conquest.²

¹ - *Oppenheim's International Law*, 9th edn., Vol.1-Peace, Parts 2-4, ed. by R. Jennings and A. Watts, (1996), P.679.

² - Some authors, such as Brownlie, regard adjudication as a mode of acquisition. For more detail see I. Brownlie, *Principles of International Law*, 4th edn., (1990), P.137. Also see H. Post, Adjudication

These modes of acquiring territory give rise to two kinds of titles. An original title was given when there was no transfer of ownership from a previous sovereign, whereas a derivative title was given when there was such a transfer. Cession is therefore a derivative mode of acquisition, whereas occupation and accretion are original. Significantly, there are differences of opinion with regards to conquest and prescription and thus, in these cases, classification is irrelevant.³

Accretion is the addition of new territory to the existing territory of a state by operation of natural factors or through human efforts,⁴ as when new islands emerge in the state's territorial waters as a result of volcanic activity-such as the island of Surtsey which appeared in Icelandic territorial waters in 1963⁵-or when a state converts part of its territorial waters into land, to be added to its land territory by placing marine blocks on the shore.

The geographic reality of the three islands does not qualify either party to claim them on this basis. The three islands have existed in the Gulf since time immemorial. Therefore, since this form of acquisition of territory is not relevant to the three islands' case, it need not be discussed further here.

What I will discuss are the modes of acquiring territories, relevant to the dispute over the three islands. These are occupation, cession, acquisitive prescription, and conquest.

as Mode of Acquisition of Territory? *Fifty Years of the International Court of Justice*, ed. V. Lowe and M. Fitzmaurice, (1996), P.237.

³ - Brownlie, *Principles*, op. cit., P.132.

⁴ - J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, (1963), P.173.

⁵ - R.M. Wallace, *International Law*, (1992), P.96.

4.2.1. Occupation

Oppenheim defines occupation as “the act of appropriation by a state by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another state”.⁶ Starke defined occupation as “establishing sovereignty over territory not under the authority of any other state whether newly discovered, or-an unlikely case-abandoned by the state formerly in control”.⁷

Hence, occupation gives a state original title to territory; it is the means of establishing title to territory which is *terra nullius*, that is, owned by no one and therefore susceptible to acquisition.⁸ In other words, the concept of *terra nullius* covers areas which have never been the object of any appropriation.⁹ A concise explanation of the concept *terra nullius* is to be found in the advisory opinion of the International Court of Justice in the *Western Sahara* case in 1975:

The expression ‘*terra nullius*’ was a legal term of art employed in connection with ‘occupation’ as one of the accepted legal methods of acquiring sovereignty over territory. ‘Occupation’ being legally an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession, it was a cardinal condition of a valid ‘occupation’ that the territory should be *terra nullius*-a territory belonging to no-one-at the time of the act alleged to constitute the ‘occupation’.¹⁰

In the past, occupation was the common method for acquisition of territorial sovereignty. This was because many areas were uninhabited, not owned by anyone or not yet discovered. In the beginning, discovering a previously unknown territory was enough justification for the discovering country to claim ownership over the discovered territory, even if the discovering did not involve any act of sovereignty.

⁶ - Oppenheim's, op. cit., P.686.

⁷ - J.G. Starke, *Introduction to International Law*, (1989), P.160.

⁸ - D.W. Greig, *International Law*, (1976), P.161. Also see M.N. Shaw, *Territory in International Law*, NYbIL, Vol.13, (1982), P.82.

⁹ - See S.T. Bernardez, *Territory, Acquisition*, EPIL, Vol.10, (1987), P.500.

¹⁰ - ICJ Rep., (1975), P.39.

This is what had happened during the fifteenth and sixteenth centuries in the age of the first European expansion outside the European continent. Territories were given by Papal grants to assure sovereignty over them. The most famous of these grants was from Pope Alexander VI in 1493 and occurred one year after the discovery of America. According to this declaration, the Pope distributed the territory between Spain and Portugal.¹¹ Some countries, however, argued that Papal grants were only effective for the beneficiary countries and did not bind other countries. Since the sixteenth century, efforts have been made to establish principles for the acquisition of sovereignty over territories which did not belong to anyone (*terra nullius*).¹²

The concept of *terra nullius* has been vigorously criticised by modern publicists. Judge Ammoun, in his separate opinion in the *Namibia* case (1971), observed:

It was a monstrous blunder and a flagrant injustice to consider Africa south of the Sahara as *terrae nullius*, to be shared out among the Powers for occupation and colonization, when even in the sixteenth century Victoria had written that Europeans could not obtain sovereignty over the Indies by occupation, for they were not *terra nullius*.¹³

Professor Jennings notes that “this somewhat lofty attitude towards peoples who did not enjoy ‘civilization’ in the sense of living under a State organized after the manner of the States of Europe seemed natural enough in the late nineteenth century, though its survival in the term ‘civilized states’ may cause some embarrassment now”.¹⁴

¹¹ - T.J. Lawrence, *The Principles of International Law*, 7th edn., Revised by P.H. Winfield, (1930), P.146. Also D.P. O’Connell, *International Law*, 2nd ed., Vol.I, (1970), P.408.

¹² - See A.S. Abu Haif, *al-Qanoun al-Dawli al-Aam (Public International Law)*, 12th edn., (1995), P.347. Also A.A. Ali, *al-Wagiz fi al-Qanoun al-Dawli al-Aam (Concise Public International Law)*, (1989), P.164-5. Also C. Rousseau, *al-Qanoun al-Dawli al-Aam (Public International Law)*, Translation to Arabic by S. Khalifah and A. Saind, (1982), P.148.

¹³ - ICJ Rep., (1971), P.86.

¹⁴ - R.Y. Jennings, *The Acquisition of Territory in International Law*, (1963), P.20.

From there, an internationally accepted customary concept was established during the nineteenth century:

(i) The occupied territory must be *terra nullius* (i.e., territory which immediately before acquisition, belonged to no state).¹⁵ For example, in the dissenting opinion of Judge Sette-Camara in the case concerning the *Territorial Dispute* between Libyan Arab Jamahiriya and Chad in 1994, he stated:

I believe that the reasons aligned by Libya to contend that *effectivités* could not play a decisive role in this case were valid. The basic question was a question of title, and the legal title has been shown to reside first with the indigenous population, especially the Senoussi peoples, the Ottoman Empire, and later Italy. This was the title that Libya inherited. France never occupied the Libya-Chad borderlands (whether by peaceful means or by conquest) until after 1929, by which time occupation by force was unlawful under international law. In any event, the territories in question were not *terra nullius*, so that the occupation by a French military presence was, to use the words of Chief Justice Hughes of the United States Supreme Court, 'a mere usurpation'.¹⁶

Also in the *Land, Island and Maritime Frontier Dispute* between El Salvador/Honduras: Nicaragua intervening in 1992, the Court ruled that:

The islands were not *terra nullius*, and in legal theory each island already appertained to one of the three States surrounding the Gulf [of Fonseca] as heir to the appropriate part of the Spanish colonial possessions, so that acquisition of territory by occupation was not possible; but the effective possession by one of the Gulf States of any island of the Gulf could constitute an *effectivité*, though a post-colonial one, throwing light on the contemporary appreciation of the legal situation.¹⁷

At present, there are no *terra nullius* as all the land areas of the world are under the sovereignty of some state,¹⁸ with the exception of the Antarctic.¹⁹ Territories which

¹⁵ - See M.M. Whiteman, *Digest of International Law*, Vol.2, P.1030. The acquisition of a title to parts of the high seas must always be a prescription and not an occupation, for the high seas are not *res nullius*. See Jennings, op. cit., P.23.

¹⁶ - ICJ Rep., (1994), P.100. Also, ILR, Vol.100, P.98.

¹⁷ - ICJ Rep., (1992), P.566.

¹⁸ - H. Thirlway, *The Law and Procedure of the International Court of Justice 1960-1989*, BYbIL, (1995), P.11. Also see Bernardez, op. cit., P.501.

are disputed or which are inhabited by tribes or peoples having a social and political organization cannot be of the nature of *terra nullius*. As the International Court of Justice said, with regard to the case of *Western Sahara*:

Whatever differences of opinion there may have been among jurists, the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius*. It shows that in the case of such territories the acquisition of sovereignty was not generally considered as effected unilaterally through ‘occupation’ of *terra nullius* by original title but through agreements concluded with local rulers. On occasion, it is true, the word ‘occupation’ was used in a non-technical sense denoting simply acquisition of sovereignty; but that did not signify that the acquisition of sovereignty through such agreements with authorities of the country was regarded as an ‘occupation’ of a ‘*terra nullius*’ in the proper sense of these terms. On the contrary, such agreements with local rulers, whether or not considered as an actual ‘cession’ of the territory, were regarded as derivative roots of title, and not original titles obtained by occupation of *terrae nullius*.

In the present instance, the information furnished to the Court shows that at the time of colonization Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them.²⁰

¹⁹ - Considering claims over the Antarctic, Article 4 of the Antarctic Treaty signed at Washington, on 1 December 1959 provides:

“1. Nothing contained in the present Treaty shall be interpreted as:

(a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;

(b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;

(c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other State’s right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force”, UNTS, Vol.402, No. 5778, P.71. Also D.J. Harris, *Cases and Materials on International Law*, (1991), P.213.

For more detail of the Antarctica claim see G.J. Mangone, *Unrecognized Boundaries: The Case of Antarctica*, Thesaurus Acroasium, Vol.XIV, (1985), P.145.

Concerning Outer Space, Article 2 of Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies text provides “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means”, UKTS, No.10, (1968), Cmd. 3519. Also Harris, op. cit., P.222.

²⁰ - ICJ Rep., (1975), P.39.

My point of view, therefore, is that any territory which is inhabited at present cannot be *terrae nullius* for any country to occupy on it and annex it to her sovereignty. This condition for the occupation of a territory is, therefore, irrelevant in present day conditions.

(ii) There must be an announced intention by the occupying state to acquire sovereignty over a territory in order to enable other states to make any claims of their own.²¹ It happened that in the second half of the nineteenth century a number of states desired to acquire a certain territory without being able to occupy it effectively at once, and the fear that another state would anticipate them and occupy this territory led many of states to occupy territories through two means. The first method was to get the chiefs of natives inhabiting ‘unoccupied’ territories to agree to commit themselves as a ‘protectorate’ of states which were members of the international community. In this case the occupying state secured its position in these territories against the expansion of the other colonising states. The second means was by securing and delineating ‘spheres of influence’²² through international treaties with other interested powers. In this case the interested powers could gradually extend their sovereignty over their individual spheres of influence without coming into conflict with each other.

This condition of ‘announced intention’ appeared during the period of European competition to occupy territories in Africa. It was agreed between the parties who signed the General Act of the Berlin Congo Conference of 1885 that occupation should be notified to one another.²³ This was abrogated between the signatories of

²¹ - *Island of Palmas* case, RIAA, Vol.II, P.868.

²² - A sphere of influence is “the description of territory exclusively reserved for future occupation by a state which had effectively occupied adjoining territories”, *Oppenheim's*, op. cit., P.691.

²³ - See L. Oppenheim, *International Law*, Vol.I, 8th edn., ed. H. Lauterpacht, (1955), P.559.

the Convention of St. Germain of 10 September 1919.²⁴ Accordingly, after this day it was no longer a condition for the legality of acquisition, that the acquiring state inform the other states that it had acquired the territory. But the real acquisition by the state should take place in the territory to prove this to the other states.

(iii) The occupation must be real or ‘effective’ and this requires the actual exercise of sovereignty over territory. Brownlie defined ‘effective occupation’ as “a *technical term* denoting the taking of possession as a consequence of the exercise of government authority in an area which does not belong to another State”.²⁵ In the *Legal Status of Eastern Greenland* case (1933), between Denmark and Norway, Denmark claimed to have occupied this region along with the rest of Greenland early in the eighteenth century. During the present century Norway claimed sovereignty over the area, and the dispute was referred to the Permanent Court of International Justice. The Court ruled:

a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority.²⁶

Discovery alone does not establish a good title, giving only an inchoate and not a definite title of sovereignty. An inchoate title must be completed within a reasonable period by the effective occupation of the territory in question.²⁷ In the *Island of Palmas* case between the United States and Netherlands, the United States claimed that as a result of the Spanish-American war in 1898, Spain handed over its right of

²⁴ - See UKTS, No.18, (1919), Cmd.477.

²⁵ - I. Brownlie, International Law at the Fiftieth Anniversary of the United Nations: General Course on Public International Law, Recueil des Cours, Vol.255, (1995), P.157.

²⁶ - PCIJ, Ser. A/B, No. 53, P.45-6.

²⁷ - *Oppenheim's*, op. cit., P.688-9. Also see A. Zayas, Territory, Discovery, EPIL, Vol.10, (1987), P.504.

territorial sovereignty to the United States, including the island of Palmas. The United States claimed that Spain had sovereignty over the island because of its discovery in the sixteenth century and that, according to the Treaty of Paris, all the territorial rights of Spain were transferred to the United States. On the other hand, the Dutch claimed the island on the basis of exercise of sovereignty over a considerable length of time. This was not challenged by the Spanish precedence of discovering the island because Spain never actually practised its sovereignty. Judge Max Huber in this case adopted the view that discovery does not create a definitive title of sovereignty, but only an inchoate title. If the state does not practice sovereignty over the territory it will return to the states of *terra nullius*.²⁸

Possession and administration are the essential elements of an effective occupation. By the former is meant that the occupying state should take the territory under its sway (*corpus*) with the intention (*animus*) of acquiring sovereignty. This can be achieved by establishing a settlement on the territory, accompanied by some formal act which announces both that the territory has been taken possession of and that the possessor intends to keep it under his sovereignty. Usually such a formal act consists either of a proclamation or of the hoisting of a flag. The occupying state must establish an administration within a reasonable time after the act of taking possession, which indicates that the territory in question is under the sovereignty of the new possessor.²⁹

For example, by an arbitral decision the King of Italy awarded *Clipperton Island* to France against the claims of Mexico to this uninhabited island lying in the

²⁸ - RIAA, Vol.II, P.846.

²⁹ - *Oppenheim's*, op. cit., P.688-9.

Pacific Ocean, west of Mexico.³⁰ The award involved the doctrines of discovery and effective possession in territorial sovereignty.

A French expedition had visited the island, measured it, landed upon it, and notified the French Consulate in Honolulu and the Government of Hawaii of the act of taking possession. In 1897 the French navy had exercised surveillance of the island, finding three Americans collecting guano there, and demanded an explanation from the United States, which had made no claim to the island. After the departure of the French vessel, Mexican marines landed on the island and hoisted the Mexican flag over it. Mexico claimed that the island had been discovered by the Spanish navy and that by virtue of the 1493 Papal Bull rightly belonged to Spain. Territorial rights over the island had passed to Mexico in 1836 as the successor state of the Spanish state.³¹

The arbitrator held that the law requires “the actual, and not the nominal, taking of possession” as a necessary condition of occupation. In ordinary cases this would mean the establishment by a state of an organization capable of making its law respected. But where a territory “by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying State makes its appearance there, at the absolute and undisputed disposition of the State, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed”.³² Even if France did not exercise her power there in a positive manner, it did not forfeit its right and had never shown any intention of abandoning the island.

³⁰ - ILR, Vol.6, (1931-1932), P.105. Also see V. Emmanuel, *Judicial Decisions Involving Questions of International Law (France-Mexico)*, AJIL, Vol.26, (1932), P.390.

³¹ - See Emmanuel, *op. cit.*, P.391-2.

³² - ILR, Vol.6, (1931-1932), P.107.

However, the circumstances and nature of the territory under discussion must be taken into consideration. For example, if certain areas of the territory are too cold to establish a continuous control over it, then the concept of actual occupation should be less significant in relation to the acquisition of territorial sovereignty. This point was highlighted by the Permanent Court of International Justice in the *Eastern Greenland* case:

It is impossible to read the records of the decision in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereignty rights, provided that the other state could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.³³

(iv) Occupation should be carried out in the name of the state, even in the cases where the occupation is actually realised by individuals or companies. The Tribunal stressed in the *British Guiana-Brazil Boundary Award* (1904) that “to acquire the sovereignty of regions which are not in the dominion of any State, it is indispensable that the occupation be effected in the name of the State which intends to acquire the sovereignty of those regions”³⁴ Judge Huber in the *Island of Palmas* case went to great lengths to attribute the acts of the Dutch East India Company to the Netherlands, thereby emphasising that occupation must be exercised on behalf of a state if it is to be effective. Private individuals cannot legitimately purport to act on behalf of the state of which they are a national without that state’s authorisation.³⁵ In the *Anglo-Norwegian Fisheries* case, Judge McNair stated that: “the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their

³³ - PCIJ, Ser. A/B, No. 53, P.46.

³⁴ - BFSP, Vol.99, (1905-6), P.930.

³⁵ - See RIAA, Vol.II, P.858.

Governments or that in some other way their Governments have asserted jurisdiction through them”.³⁶

4.2.2. Cession

The concept of cession is “the transfer of sovereignty over state territory by the owner-state to another state”.³⁷ Normally, cession is formulated through the provisions of a treaty of cession that may specify precisely the area to be transferred as well as the condition under which the transfer is to be accomplished.³⁸

A cession treaty can take two forms. It may be voluntary or forced. Examples of voluntary cession include the following: in 1867 Russia sold her Alaskan territory in America to the United States for 7,200,000 dollars; in 1899 Spain sold the Caroline islands to Germany for 25,000,000 pesetas; and in 1916 Denmark sold the islands of St Thomas, St John and St Croix in the West Indies to the United States. Also in 1890 Britain and Germany exchanged Zanzibar and Heligoland, and in 1898 China leased Kiaochow to Germany, and Hong Kong to Great Britain for a term of 99 years.³⁹

The second form usually occurs at the end of a war or after a threat of force. When traditional international law considered resort to war legitimate, it was legal to give up territory by force. It was possible for the victorious country to force the defeated country to give up its right of sovereignty over a certain territory by a peace treaty. In this case sovereignty is won by cession not conquest.⁴⁰ For example, in the

³⁶ - ICJ Rep., (1951), P.184.

³⁷ - *Oppenheim's*, op. cit., P.679. Also Jennings has defined cession “as the transfer of territorial sovereignty by one state to another state”. op. cit., P.16.

³⁸ - M. Akehurst, *A Modern Introduction to International Law*, 6th edn., (1987), P.144.

³⁹ - *Oppenheim's*, op. cit., P.680-2.

⁴⁰ - Jennings, op. cit., P.19.

Potsdam declaration of 26 July 1945, the United Kingdom, the United States of America, China and the Union of Soviet Socialist Republics, agreed that Japan, on its surrender, would be stripped of all island territory in the Pacific, 'seized or occupied' by it since the First World War.⁴¹

Cessions of territory have often been part of a treaty of peace imposed by the victor. A treaty imposed by certain kinds of force is now subject to the rule expressed in Article 52 of the Vienna Convention on the Law of Treaties 1969, that the treaty is void "if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations".⁴² United Nations General Assembly Resolution 42/41 of 18 November 1987, reaffirms that "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter".⁴³

A treaty of cession should mean cession of sovereignty and not the lease or cession of administration to another country. For example, in 1898 China leased for various periods different territories to France, Russia, Britain and Germany. By the terms of these leases China retained the sovereignty over the leased territories and parted merely with the exercise of her sovereign rights for a limited number of years.⁴⁴ Similarly, according to the fourth Article of the treaty of the Sudanese-Ethiopian borders, signed on 15 May 1902 between Ethiopia and Britain, Britain leased from Ethiopia an area of territory near Itang on the River Baro to use it as a

⁴¹ - See Whiteman, op. cit., Vol.3, P.591-2.

⁴² - UKTS, No.58, (1980), Cmnd.7964. Also see I. Brownlie, *Basic Documents in International Law*, (1995), P.388.

⁴³ - ILM, Vol.27, (1988), P.1673. It should be noted that, in principle resolutions of the General Assembly only have the force recommendations and impose no legal obligations. See Article 10 of the UN Charter and also, S.M. Schwebel, *Justice in International Law*, (1994), P.499.

⁴⁴ - Abu Haif, op. cit., P.325-6.

commercial centre. It was agreed that the lease would be terminated by the end of the Anglo-Egyptian Government in the Sudan.⁴⁵ From 5 July-12 August 1955, Britain and Ethiopia exchanged correspondence to end the lease of the area.⁴⁶ Again, according to the Anglo-Turkish Treaty, signed on 4 June 1878, the administration of the island of Cyprus was given to Britain.⁴⁷

Accordingly, if it appeared that the treaty was meant for the lease or cession of administration of a territory, then the sovereignty of this territory remains under the country which gave the lease or the cession of administration.⁴⁸ In an Indian case *State of Madras and Cochin Coal Company*,⁴⁹ the High Court of Kerala held that the transfer of jurisdiction over a portion of territory from one state to another does not imply a cession of territory or the abandonment of sovereignty by the transferor of the jurisdiction. Referring to the Agreement by which the transfer was effected, the Court said that it “did not cede the lands themselves but only jurisdiction over them”.⁵⁰ Again, in the *Lighthouses in Crete and Samos* case the Permanent Court of International Justice held that in 1913 the island of Crete and Samos must be regarded as having been under the sovereignty of Turkey which therefore could grant or renew concessions with regard to these islands. Referring to Crete, the court said that notwithstanding the autonomy conceded to her by Turkey, the island “had not ceased to be a part of the Ottoman Empire. Even though the Sultan had been obliged to accept important restrictions on the exercise of his sovereignty in Crete,

⁴⁵ - F.A. Taha, *The Sudan-Ethiopia Boundary Dispute*, (1983), P.46.

⁴⁶ - UKTS, No.86, (1955), Cmd. 9646.

⁴⁷ - See this Treaty in, CTS, Vol.153, (1878), P.67.

⁴⁸ - F.A. Taha, *al-Qanwn al-Dwly wa Mnazaint al-Hadud (International Law and Boundary Disputes)*, (1982), P.25.

⁴⁹ - ILR, Vol.26, (1958-II), P.116.

⁵⁰ - Ibid. P.117.

that sovereignty had not ceased to belong to him, however it might be qualified from a juridical point of view”.⁵¹

The intrusion of political interpretation led some writers to treat the cases of leases and cession of administration alluded to above as disguised cessions of territorial sovereignty. Lawrence, for instance, said that the attempt to separate sovereignty from possession by the use of phrases taken from the law of usufruct was in its very nature deceptive: “The terms in question are mere diplomatic devices for veiling in decent words the hard fact of territorial cession”.⁵²

Lauterpacht, however, criticised these opinions and referred to them as political explanations. He said:

There is always a danger in the attempt to comprehend the realities of a situation at the expense of the realities of the law. It is not the business of the law to give a political interpretation, however closely approximating to the facts, of the legal situation. The gap between the two is a creature of the parties and must not be bridged by attempts at realism.⁵³

There are different opinions about the validity of cession, concerning the actual handing over of the ceded territory to the cessionary. Kelsen sees that cession is not complete until the actual handing over of the ceded territory, and it becomes a part of the cessionary.⁵⁴ Oppenheim, however, states:

the validity of the cession does not depend upon tradition, the cession being completed by ratification of the treaty of cession, thus enabling the new owner to cede the acquired territory to a third state at once without taking actual possession of it.⁵⁵

⁵¹ - PCIJ, Ser. A/B, No. 71, (1937), P.103.

⁵² - Lawrence, op. cit., P.169.

⁵³ - H. Lauterpacht, *International Law*, Vol.I, ed. by E. Lauterpacht, (1970), P.373.

⁵⁴ - H. Kelsen, *General Principles of International Law*, 2nd edn., by R.W. Tucker, (1966), P.312-3.

⁵⁵ - *Oppenheim's*, op. cit., P.683.

Since cession transfers sovereignty from the ceding state to the cessionary state, therefore the ceding state must have sovereignty over the ceded territory.⁵⁶ In the *Island of Palmas* case, the United States based its claim partly on the Treaty of Paris of 1898, which transferred to the United States all rights of sovereignty which Spain possessed, said to include the disputed island. The arbitrator held that the treaty could not be regarded as conclusive for “it is evident that Spain could not transfer more rights than she herself possessed”.⁵⁷

Therefore protectorate and trusteeship states cannot cede their territories unless the relation with the protector states allows this. On the other hand, a neutralised state can only cede territory to another state with the consent of the guaranteeing states.⁵⁸

In a case when a cession depends on a plebiscite, sovereignty over the ceded territory remains with the ceding state until the date of plebiscite which confirms the cession treaty's entry into force. Oppenheim stresses the invalidity of a cession without the inhabitants' confirmation given to this cession by plebiscite.⁵⁹ Professor Shihab, agreeing with Oppenheim, says “it is illegal to transfer the sovereignty over a territory to another state without the consent of the people concerned”.⁶⁰

The connection with the principle of self-determination, which was one of the principles of President Wilson after the First World War, is evident.⁶¹ It was presumed to apply the principle of self-determination to all ceded territories after that war. But it is doubtful that this principle was applied to every cession carried

⁵⁶ - Ibid. P.680.

⁵⁷ - RIAA, Vol.II, P.842.

⁵⁸ - Abu Haif, op. cit., P.352.

⁵⁹ - Oppenheim's, op. cit., P.684.

⁶⁰ - M.M. Shihab, *al-Qanoun al-Dawli al-Aam (Public International Law)*, (1987), P.151.

⁶¹ - Abu Haif, op. cit., P.353.

out. Although in the Saar Basin case, the cession was dependent on the plebiscite, Alsace-Lorraine was ceded to France and the Austrian Tyrol to Italy without allowing any plebiscite.⁶²

4.2.3. *Acquisitive prescription*

Prescription is defined as “the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order”.⁶³ Johnson defines prescription as “the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time”.⁶⁴

In international law ‘prescription’ has three meanings. It is necessary to distinguish between them as follows:

(i) Prescription used in the sense of ‘extinctive prescription’ similar to the English Law as ‘limitation’, that is a failure to present a claim within a reasonable time which may result in the loss of the competence to enforce it.⁶⁵

(ii) Immemorial possession is one kind of ‘acquisitive prescription’, where there is a possession which has been so long established that it is impossible to prove

⁶² - *Oppenheim's*, op. cit., P.684. For more detail on the Austria example see K. Marek, *Identity and Continuity of States in Public International Law*, (1968), P.199.

⁶³ - Ibid. P.706.

⁶⁴ - D.H.N. Johnson, *Acquisitive Prescription in International Law*, BYbIL, Vol.27, (1950), P.353.

⁶⁵ - Ibid. P.332.

whether the origin of this state of affairs is legal or illegal, and it is therefore presumed to be legal.⁶⁶

(iii) Usucaption in Roman Law is akin to acquisitive prescription but the difference between the two is that the former required good faith possession, whereas international law recognises prescription both in cases where the state is in good faith; possession and in cases where it is not.⁶⁷

There has always been opposition to prescription as a mode of acquiring territory. Some writers argue that while acquisition of property has been accepted in private law by prescription it cannot be accepted as a mode of acquiring sovereignty over a territory in international law.⁶⁸ For example, in the *Right of Passage* case, between Portugal and India in 1960, Judge Moreno Quintana referred to prescription as “a private law institution which I consider finds no place in international law”.⁶⁹ In the opinion of Sultan, Ratib and Amer, prescription ignores two important elements: justice in acquiring the right of title and the wish of the inhabitants of the territory concerned for self-determination,⁷⁰ but the majority of writers have supported acquisitive prescription as a rule of international law.⁷¹

Therefore, the following conditions must exist in order for acquisitive prescription to operate:

⁶⁶ - Ibid. P.335. Also Jennings, op. cit., P.21.

⁶⁷ - See *Oppenheim's*, op. cit., P.705-6.

⁶⁸ - See H. Sultan, A. Ratib and S. Amer, *al-Qanoun al-Dawli al-Aam (Public International Law)*, (1987), P.672.

⁶⁹ - ICJ Rep., (1960), P.88.

⁷⁰ - Sultan, Ratib and Amer, op. cit., P.672.

⁷¹ - See Johnson, op. cit., P.333. Also see Abu Haif, op. cit., P.356.

(i) *The possession of the prescribing state must be exercised à titre de souverain*

This means that there must be a display of state authority and the absence of recognition of sovereignty in favour of another state.⁷² A state cannot acquire a title by acquisitive prescription if, although administering a territory, it admits that the sovereignty over that territory belongs to another state. This occurs when a state acquires territory by an international lease or when a state cedes the administration of part of her territory to another state. In these circumstances a state cannot acquire these territories *à titre de souverain*.⁷³ For the same reason, a state exercising a protectorate over another cannot acquire a title by acquisitive prescription, no matter how long it administers these territories.⁷⁴ For instance, in the period following 1878, it was impossible for Great Britain to acquire title by prescription over Cyprus because certain terms in the Anglo-Turkish Treaty signed at Constantinople on 4 June 1878 showed that Great Britain recognized the continuing sovereignty of the Sultan of Turkey over the island. A similar example is that it was impossible for Austria-Hungary to acquire title by prescription over Bosnia-Herzegovina because, under the Treaty of Berlin of 13 July 1878, the sovereignty of the Turkish Sultan over those territories was recognized.⁷⁵

Activities exercised by private persons in certain territories could not be considered as a manifestation of state authority and therefore cannot amount to the acts of a sovereign in such territories.⁷⁶ Professor Waldock said: “The acquisition of sovereignty is a state act and if the act of a discoverer is to have any validity in

⁷² - Johnson, op. cit., P.344.

⁷³ - Ibid.

⁷⁴ - M.H. Ghanem, *al-Wagiz fi al-Qanoun al-Dawli al-Aam (Concise Public International Law)*, (1979), P.207.

⁷⁵ - Johnson, op, cit., P.344.

⁷⁶ - Taha, *al-Qanwn*, op. cit., P.26.

international law it must be endorsed by the state; the *animus occupandi* ultimately must be that of the state, not of the individual”.⁷⁷ Schwarzenberger also said that the acts of individuals by themselves cannot be regarded as a substitute for the display of state authority: “Unless authorized in advance or subsequently ratified, the activities of individuals can be neither attributed nor imputed to the state whose nationals they are”.⁷⁸

The question of the legal effect of acts of private individuals arose in the *Minquiers and Ecrehos* case. Judge Levi Carneiro, when discussing the visits of French and British fishermen to the disputed islets, expressed an opinion which at first sight would convey the impression that he was of the view that the private activities of individuals could *per se* create title. Judge Carneiro said that:

in certain cases, and in certain circumstances, the presence of private persons who are nationals of a given State may signify or entail occupation by that State. Sovereignty is exercised over persons who recognize that sovereignty ...Such individual actions are particularly important in respect of territories situated at the border of two countries which both claim sovereignty in that region.⁷⁹

Judge Carneiro stated that he had in mind the fact that the limits of the Spanish and Portuguese possessions in South America, which had been strictly laid down in the Treaty of Tordesilhas, were exceeded by persons from Brazil in search for gold and emeralds. Though these persons were frequently disappointed in their material expectations “they achieved *uti possidetis* for Brazil and greatly increased her territory”.⁸⁰

⁷⁷ - C.H.M. Waldock, *Disputed Sovereignty in the Falkland Islands Dependencies*, BYbIL, Vol.25, (1948), P.323.

⁷⁸ - G. Schwarzenberger, *Title to Territory: Response to A Challenge*, AJIL, Vol.51, (1957), P.316.

⁷⁹ - ICJ Rep., (1953), P.104-5.

⁸⁰ - Ibid. P.105.

Although the private activities of individuals in a certain territory cannot *per se* constitute a basis of title, they may nevertheless provide evidence of an already existing one.⁸¹ In the *Rann of Kutch* case between India and Pakistan in 1968, contrary to what tribunal member Judge Bebler in his separate opinion had suggested, the Tribunal did not regard the grazing of the Sind cattle in the three Bets of the Rann as *per se* a constitutive basis of the Sind sovereignty but as evidence of it. Thus, after awarding the three Bets to Pakistan on the basis of “effective peaceful occupation and display of Government authority”, the Tribunal remarked that “the inhabitants of Sind who openly used the grazing grounds for over one hundred years ... must have acted on the basis that Dhara Banni and Chhad Bet were Sind territory”.⁸²

(ii) The possession must be public

Although in international affairs clandestine possession of territory is difficult to conceive, it is essential to stress the importance of publicity as a condition of prescription. According to Johnson “Publicity is essential because acquiescence is essential. For acquisitive prescription depends upon acquiescence, express or implied. Acquiescence is often implied, in the interests of international order, in cases where it does not genuinely exist; but without knowledge there can be no acquiescence at all”.⁸³

However, in a complicated situation of competing state activity publicity will not play an important role because acquiescence may not be relevant except in minor

⁸¹ - See G. Fitzmaurice, *The Law and Procedure of the International Law*, Vol.1, (1986), P.178. Also see the same writer, *The Law and Procedure of the International Court of Justice 1951-4: General Principles, and Sources of Law*, BYbIL, Vol.30, (1953), P.48.

⁸² - ILM, Vol.7, (1968), P.689.

⁸³ - Johnson, op. cit., P.347.

respects.⁸⁴ In the *Island of Palmas* case Judge Huber remarked that: “A clandestine exercise of state authority over an inhabited territory during a considerable length of time would seem to be impossible”.⁸⁵ Also, the International Court of Justice’s judgment in the *Frontier Land* case which concerned a territorial dispute between Belgium and the Netherlands, the difficulties confronting Belgium in detecting encroachments upon and in exercising its sovereignty over these two plots, surrounded as they were by Netherlands territory, were manifest.⁸⁶ Unlike the Court, Judge Armand-Ugon was of the view that since the Convention of 1843 and the draft Convention of 1892, the Netherlands continued to regard the disputed plots as theirs “and to exercise there governmental functions in a public and peaceable way”.⁸⁷

The condition that the possession must be public does not mean that the possessing state must inform other interested states. Thus, in the *Anglo-Norwegian Fisheries* case, the Court seems to have imputed to the United Kingdom constructive knowledge of the Norwegian system of delimitation. The United Kingdom’s ignorance was found not to be excusable:

The notoriety of the facts ...Great Britain’s position in the North Sea, her own interest in the question, and her long abstention would in any case warrant Norway’s enforcement of her system against the United Kingdom.⁸⁸

In the *Minquiers and Ecrehos* case the United Kingdom maintained that the French government must, through its consular representative, have been aware of the British assertions of sovereignty in respect of the disputed islets. The United Kingdom

⁸⁴ - Brownlie, *Principles*, op.cit., P.158.

⁸⁵ - RIAA, Vol.II, P.868.

⁸⁶ - ICJ Rep., (1959), P.229.

⁸⁷ - Ibid. P.250.

⁸⁸ - ICJ Rep., (1951), P.139.

argued that it was difficult to believe that France could maintain a consul in Jersey, and yet not be aware of the attitude and position of the Jersey authorities respecting the case of *Minquiers and Ecrehos*.⁸⁹

(iii) The possession must be continuous and peaceful

In international law, the uninterrupted continuity of possession is an important factor in acquiring sovereignty over a territory.⁹⁰ In the case of *Minquiers and Ecrehos* the United Kingdom claimed that the state which aspires to gain sovereignty over territory by acquisitive prescription should have possessed it continuously. This means that presence in the territory for a short while is not enough.⁹¹

Possession maintained by force in the face of persistent and violent opposition does not amount to prescription, for it is contrary to the main purpose of the doctrine.⁹² In the *Island of Palmas* case, Judge Huber refers to “continuous and peaceful display of state authority ‘so-called prescription’”. In this case the arbitrator had to decide whether sovereignty over the island belonged to the Netherlands or to the United States. The United States’ claim was based on discovery of the island by Spain. But the arbitration rejected the United States’ claim and decided in favour of the Netherlands on the basis of the continuous and peaceful display of sovereignty by the Netherlands.⁹³ Also, in the *Chamizal Arbitration*, between the United States and Mexico, the United States claimed as against Mexico a tract of the Rio Grande on the basis of prescription, but the claim failed on the ground that the possession of the United States had not been without challenge. The United States was precluded from acquiring on a basis of prescription by the terms of a Convention of 1884,

⁸⁹ - ICJ Pleadings, Vol.II, P.175.

⁹⁰ - Waldock, op. cit., P.321

⁹¹ - ICJ Pleadings, Vol.II, P.364.

⁹² - Johnson, op.cit., P.345.

⁹³ - RIAA, Vol.II, P.868.

which endeavored to fix the rights of the two nations with respect to the changes brought about by the action of the waters of the Rio Grande. Furthermore, possession must be peaceable to provide a basis for prescription and, in the opinion of the Commissioners, diplomatic protests by Mexico prevented title arising. A failure to take action which might lead to violence was not held to jeopardize Mexican rights.⁹⁴

Similarly, in the *Minquiers and Ecrehos* case between the United Kingdom and France, Fitzmaurice, Counsel for the United Kingdom, argued that his country's possession of the disputed islets was 'peaceful' for the United Kingdom "did not invade the Minquiers or the Écréhous or commit any act of war of any kind in relation to them".⁹⁵ Explaining the requirement of 'peacefulness' in the acquisition of a prescriptive title, Fitzmaurice said that it extends "to preventing the maintenance of possession by acts in the nature of war or public armed force or hostilities". But it does not prevent ordinary police acts carried out in the territory concerned in the process of administration for otherwise the prescribing state would be deprived "of the possibility of maintaining law and order in territory which it is undoubtedly administering *de facto* in which it is therefore to that extent internationally responsible for the maintenance of law and order".⁹⁶

(iv) *The possession must endure for a certain length of time*

No general rule in international law can be laid down on the length of time required for the establishment of prescriptive title.⁹⁷ For example, in the *Anglo-Norwegian Fisheries* case Judge Alvarez said "International law does not lay down any specific

⁹⁴ - Ibid. Vol.XI, P.329.

⁹⁵ - ICJ Pleadings, Vol.II, (1953), P.365.

⁹⁶ - Ibid.

⁹⁷ - Johnson, op. cit., P.347.

duration of time necessary for prescription to have effect. A comparatively recent usage ...may be of greater effect than an ancient usage insufficiently proved”.⁹⁸ But a few writers have tried to limit prescriptive time, for example, Grotius and his followers favoured more than a hundred years while F. de Martens and Rivier required ‘immemorial possession’.⁹⁹ However the majority of writers conclude that the time varies with the facts of each case which really eliminates time as a special requirement.¹⁰⁰

In international law there is nothing to prevent states in dispute over the sovereignty of certain territory from agreeing on a certain period of time required for the establishment of sovereignty over such territory by prescription. In the British Guiana-Venezuela boundary dispute, the treaty of 1897 fixed a fifty years period for the requirement of establishing title by prescription.¹⁰¹

(v) *Acquiescence*

Acquiescence constitutes the operative factor in the acquisition of title by prescription. “No amount of activity on the part of the ‘prescribing’ State would avail, without the passivity and inaction of the original sovereign”.¹⁰²

The idea of acquiescence occurs in circumstances where a protest is called for and does not happen.¹⁰³ Jennings considers acquiescence to “arise from a mere omission to protest against a situation where a right to protest existed and its exercise was called for”.¹⁰⁴ Shaw argues “a situation arises which would seem to

⁹⁸ - ICJ Rep., (1951), P.152.

⁹⁹ - Ibid.

¹⁰⁰ - Brownlie. *Principles*, op.cit., P.158.

¹⁰¹ - BFSP, Vol.89, P.60.

¹⁰² - Fitzmaurice, *The Law and Procedure*, op.cit., P.271 n.1.

¹⁰³ - Brownlie. *Principles*, op.cit., P.160.

¹⁰⁴ - Jennings, op. cit., P.36.

require a response denoting disagreement and since this does not transpire, the state making no objection is understood to have accepted the new situation”.¹⁰⁵

In the formation of prescriptive rights acquiescence is a necessary and significant factor. “Acquiescence is equivalent to tacit or implied consent. It takes the form of silence or absence of protest in circumstances which, according to the practice of states and the weight of authority, demand a positive reaction in order to preserve a right”.¹⁰⁶ The leading case on acquiescence is the *Temple of Preah Vihear* which concerned a border dispute between Cambodia and Thailand.¹⁰⁷ The frontier was the subject of a treaty in 1904 between Siam (now Thailand) and France, as the protecting power for Cambodia, which provided for a delimitation commission. The border was duly surveyed but was ambiguous as to the site of the Preah Vihear temple area. Thailand denied acceptance of the Annex 1 map and the frontier line indicated thereon by the adoption of a passive attitude. She argued that her conduct, involving at most a failure to object, could not suffice to render her a consenting party to a departure from the watershed line specified by Article 1 of the Treaty of 1904. In rejecting this argument, the Court specifically found that the circumstances “were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced”.¹⁰⁸ This is clear finding

¹⁰⁵ - M.N. Shaw, *International Law*, (1991), P.298.

¹⁰⁶ - I.C. MacGibbon, *The Scope of Acquiescence in International Law*, BYbIL, Vol.31, (1954), P.182.

¹⁰⁷ - ICJ Rep., (1962), P.6. Also ILR, Vol.33, P.48.

¹⁰⁸ - Ibid. P.23. In his separate opinion Judge Fitzmaurice said that he could not place any other interpretation on Thailand's conduct other than that she accepted the Annex 1 line as representing the frontier in the Preah Vihear region. He further pointed out that “even negative conduct-that is to say failure to act, react or speak, in circumstances where failure so to do must imply acquiescence or acceptance-is...quite sufficient for this purpose, if the facts are clear”. Ibid. P.55.

of acquiescence by silence; there was no estoppel as Cambodia had provided no evidence that it had, in the years following the delivery of the maps, acted on the basis of Thailand's apparent acceptance of the map so as to change its position to its own detriment.

The Court did not, however, rely solely on the conduct of Thailand in the years immediately following the production of the relevant map. The Court relied on a broader concept of preclusion based upon Thailand's conduct over many years:

Even if there were any doubt as to Siam's acceptance of the map in 1908, and hence of the frontier indicated thereon, the Court would consider, in the light of the subsequent course of events, that Thailand is now precluded by her conduct from asserting that she did not accept it. She has, for fifty years, enjoyed such benefits as the Treaty of 1904 conferred on her, if only the benefit of a stable frontier...It is not now open to Thailand, while continuing to claim and enjoy the benefits of the settlement, to deny that she was even a consenting party to it.¹⁰⁹

In the *Anglo-Norwegian Fisheries* case, the International Court of Justice further confirmed the validity and significance of the doctrine of acquiescence in the form of absence of protest. It stated that Great Britain did not protest against the Norwegian delimitation system of its territorial seas over sixty years.¹¹⁰ This means, as Johnson affirmed, "display of authority by the one party, acquiescence in that display by the other party-those are the *sine qua non* of acquisitive prescription".¹¹¹ In his dissenting opinion in the *Frontier Land* case Judge Armand-Ugon found that the Netherlands government had exercised preponderant governmental functions in respect of the disputed plots "without these having given rise on the part of the Belgian Government to any protest or any opposition. This prolonged tolerance of

¹⁰⁹ - Ibid. P.32.

¹¹⁰ - ICJ Rep., (1951), P.138.

¹¹¹ - Johnson, op. cit., P.345.

the Belgian Government in this respect has created an indisputable right of sovereignty in favour of the Netherlands Government".¹¹²

Bowett asserts that "the claim to acquire rights by prescription must rest upon the acquiescence of States generally, or at least those States adversely affected by the claim".¹¹³ In addition, a claim of acquiescence asserts that the state concerned did accept or agree on that point.¹¹⁴ So a question that has frequently arisen is whether silence by one state in the face of a claim made by another state can be invoked as evidence of acquiescence in that claim.¹¹⁵ In the *Grisbadarna Arbitration*¹¹⁶ of 1909 between Norway and Sweden, the Permanent Court of Arbitration considered the acquiescence of Norway in certain acts of Sweden as a factor which supported the validity of the Swedish claims. The ownership of fishing banks off the coast outside territorial waters was in dispute, and the Tribunal indicated, *inter alia*, the following reason why the Grisbadarna Bank should be allotted to Sweden:

The circumstance that Sweden has performed various acts in the Grisbadarna region, especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty; whereas Norway, according to her own admission, showed much less solicitude in this region in these various regards.¹¹⁷

After adverting to the principle *quieta non movere*, the Tribunal concluded:

¹¹² - ICJ Rep., (1959), P.250.

¹¹³ - D.W. Bowett, Estoppel before International Tribunals and its Relation to Acquiescence, BYbIL, Vol.33, (1957), P.200.

¹¹⁴ - See H.Thirlway, The Law and Procedure of the International Court of Justice 1960-1989, BYbIL, Vol.60, (1989), P.29. Also see J.P. Muller and T. Cottier, Acquiescence, EPIL, Vol.1, (1992), P.14.

¹¹⁵ - I. Sinclair, Estoppel and Acquiescence, *Fifty Years of the International Court of Justice*, ed. V. Lowe and M. Fitzmaurice, (1996), P.111.

¹¹⁶ - Decision of the Permanent Court of Arbitration in the Matter of the Maritime Boundary Dispute between Norway and Sweden, AJIL, Vol.4, (1910), P.226.

¹¹⁷ - Ibid. P.233.

The stationing of a light-boat, which is necessary to the safety of navigation in the regions of Grisbadarna, was done by Sweden without meeting any protest and even at the initiative of Norway, and likewise a large number of beacons were established there without giving rise to any protests; ...It is shown by the foregoing that Sweden had no doubt as to her rights over the Grisbadarna and that she did not hesitate to incur the expenses incumbent on the owner and possessor of these banks even to the extent of a considerable sum of money.¹¹⁸

Again, in the *Island of Palmas* case between the United States and the Netherlands, the Arbitrator found that the Netherlands had a good title to the disputed island which it had “acquired by continuous and peaceful display of State authority during a long period of time”.¹¹⁹ Evidence of acquiescence by Spain and other states in the ‘open and public’ display of state authority over the island sufficed to satisfy the Arbitrator that the requirement that the display must be peaceful had been fulfilled.

The Award stated:

Since the moment when the Spaniards, in withdrawing from the Moluccas in 1666, and made express reservations as to the maintenance of their sovereign rights, up to the contestation made by the United States in 1906, no contestation or other action whatever or protest against the exercise of territorial rights by the Netherlands over the Talautse (Sangi) Isles and their dependencies (Miangas included) has been recorded. The peaceful character of the display of Netherlands sovereignty for the entire period to which the evidence concerning acts of display relates (1700-1906) must be admitted.¹²⁰

In the *Gulf of Maine* case between Canada and the United States of America in 1984,¹²¹ a relevant issue related to the conduct of the parties in granting sea-bed exploration permits over disputed areas of the Georges Bank. Canada claimed that it was known to the United States that Canada had issued such permits, and that the United States had not protested or shown any reaction; and while the United States

¹¹⁸ - Ibid. P.234-5.

¹¹⁹ - RIAA, Vol.II, P.869.

¹²⁰ - Ibid. P.868.

¹²¹ - ICJ Rep., (1984), P.246.

also issued permits in the disputed area it did nothing to inform Canada of this. Canada thus relied on the conduct of the United States as conveying the clear-even if incorrect-message that accepted the Canadian claims. The essence of the Chamber's decision on these arguments was as follows:

while it may be conceded that the United States showed a certain imprudence in maintaining silence after Canada had issued the first permits for exploration on Georges Bank, any attempt to attribute to such silence, a brief silence at that, legal consequences taking the concrete form of an estoppel, seems to be going too far.

From 1965 onwards, as we have seen, the United States also issued exploration permits for the northeastern portion of Georges Bank, that is to say in the area claimed by Canada. Here again it would have been prudent of the United States to inform Canada officially of those activities, but its failure to do so does not warrant the conclusion that it thereby gave Canada the impression that it accepted the Canada standpoint, and that legal effects resulted. Once again the United States attitude towards Canada was unclear and perhaps ambiguous, but not to the point of entitling Canada to invoke the doctrine of estoppel.¹²²

In the *Territorial Dispute* case between Libyan Arab Jamahiriya and Chad in 1994,¹²³ it might have been thought that the Court would pronounce on the relative strength of the arguments based on acquiescence which both parties had deployed in the course of the written and oral pleadings. The judgment is, however, largely silent on this aspect of the dispute. The Court found that the boundary between Libya and Chad was defined by the Treaty of Friendship and Good Neighbourliness concluded between France and Libya on 10 August 1955. The Court found support in subsequent treaties between France and Libya, or between Chad and Libya: "for the proposition that after 1955, the existence of a determined frontier was accepted and acted upon by the parties".¹²⁴ The Court may have attached marginal significance to the consideration that, during the nine-year period between the independence of

¹²² - Ibid. P.308.

¹²³ - ICJ Rep., (1994), P.6.

¹²⁴ - Ibid. P.33.

Libya in 1951 and the independence of Chad in 1960, France had submitted annual reports to the United Nations General Assembly on the territory of what was to become Chad, showing the area of Chad's territory as 1,284,00 square kilometres, which expressly included 538,000 square kilometres for the BET [Borkou, Ennedi and Tibesti]. The Court continued:

As will be clear from the indications above as to the frontier resulting from the 1955 Treaty ..., the BET is part of the territory of Chad on the basis of that frontier, but would not be so on the basis of Libya's claim. Libya did not challenge the territorial dimensions of Chad as set out by France.¹²⁵

However, the Court made no express finding of Libyan acquiescence in the frontier as determined by the Court. This is among the many matters that the Court concluded that it need not consider: "The Court's conclusion that the Treaty contains an agreed boundary renders it unnecessary to consider the history of the 'Borderlands' claimed by Libya on the basis of title inherited from the indigenous people, the Senousi Order, the Ottoman Empire and Italy".¹²⁶

The issue of Libyan acquiescence was addressed in the separate opinion of Judge Ajibola who, designated by Libya, stated: "the silence or acquiescence of Libya from the date of signing the 1955 Treaty to the present time, without any protest whatsoever, clearly militates against its claim".¹²⁷ Judge Ajibola asserted that there had been many occasions when Libya could have protested to Chad or even France that the 1955 Treaty was invalid or had failed to create the expected boundary, yet Libya was silent.

Diplomatic protests are enough to halt and prevent the prescriptive processes, but this may serve only for a period of time. A protest not followed up by other

¹²⁵ - Ibid. P.34.

¹²⁶ - Ibid. P.36.

¹²⁷ - Ibid. P.110.

action becomes in time, indirectly, tacit acquiescence.¹²⁸ In the *Chamizal Arbitration* between the United States and Mexico in 1910-11, the two governments disputed the ownership of the Chamizal district. This district, which lay between the old bed of the Rio Grande and its present bed, had been formed by the action of the water upon the banks of the river, causing the river to move southward into Mexican territory. The commissioners ruled that Mexico did all that it could to protest against what it considered to be a violation of control over the Chamizal district by the United States when Mexicans had desired to establish a customs post in the district in 1874 or 1875. They argued that it did not matter that Mexico did nothing more than diplomatic protest since violence might have erupted if it tried to enter the disputed territory.¹²⁹

Lauterpacht argues that even diplomatic protest is not necessary, however, protest may be advisable though not essential where the action of the state claiming to acquire title is so wrongful under general international law as to render it wholly incapable of becoming the source of a legal right. In his opinion, 'there are acts which are so tainted with nullity *ab initio* that no mere negligence of the interested state will cure it'.¹³⁰

Diplomatic protest is not always enough to challenge a claim of acquisitive prescription and acquiescence, if other means are available to enforce territorial sovereignty.¹³¹ Such means may include presenting the case to the United Nations, or using one of the methods mentioned in Article 33 of the Charter of United

¹²⁸ - G. Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-4: Points of Substantive Law*, BYbIL, Vol.32, (1955-6), P.33.

¹²⁹ - RIAA, Vol.XI, P.329.

¹³⁰ - H. Lauterpacht, *Sovereignty over Submarine Areas*, BYbIL, Vol.27, (1950), P.397-8.

¹³¹ - See the *Minquiers and Ecrehos* case, ICJ Pleadings, Vol.I, P.554.

Nations, namely: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, or resort to regional agencies.

On this matter Fitzmaurice says that “the protests of a state which makes, or has made, proposals for arbitration or adjudication that have been rejected or ignored, will retain their full value for a very long period”.¹³² In the *Chamizal Arbitration* between the United States and Mexico in 1911, the Commissioners ruled “in private law, the interruption of prescription is effected by a suit, but in dealings between nations this is of course impossible, unless and until an international tribunal is established for such purpose”.¹³³ In the case of *Minquiers and Ecrehos*, Judge Levi Carneiro pointed out that the court, which the commissioners noticed was absent in the *Chamizal* case, had now been established.¹³⁴

In the case of *Minquiers and Ecrehos*, the United Kingdom claimed that the French protests on the British practice of sovereignty over the disputed islands were not enough to prevent acquisitive prescription of the territory because France did not make use of all the methods offered by international law to settle the dispute. For example, France could have resorted to arbitration proceedings as mentioned in the Franco-British Arbitration Agreement of 14 October 1903; or it could have presented the case to the League of Nations. It could, also, have presented the case to the Permanent Court of International Justice or to the International Court by agreement- and there were, of course, other possibilities.¹³⁵

From my point of view, the silence of a state and her failure to demand a territory which has been disputed with other state for a long time, and without

¹³² - Fitzmaurice, op. cit., BYbIL, Vol.32, P.33-n.1.

¹³³ - RIAA, Vol.XI, P.329.

¹³⁴ - ICJ Rep., (1953), P.107-8.

¹³⁵ - ICJ Pleadings, Vol.I, P.553-4.

presentation of the dispute to an arbitration or the International Court of Justice, is an acceptance by that state of the status quo.

4.2.4. Conquest

Conquest is a mode of acquiring territory by military force during the time of war.¹³⁶

In traditional international law, since states resorted to force in the pursuance of their national interest, and war was not illegal, conquest has been an important and generally accepted mode of acquisition of territory. The conquering state had to annex the territory formally after the end of the war. Conquest was not accompanied by a treaty, but was usually announced by a proclamation.¹³⁷ For example, Great Britain annexed the South African Republic and Orange Free State in 1902, and Italy annexed Ethiopia in 1936.¹³⁸

However, with the establishing of the League of Nations, followed by the Kellogg-Briand Pact in 1928 and the Stimson Doctrine in 1932, the resort to war between states was limited. Subsequently Article 2 (4) of the United Nations Charter prohibited the use of armed force between states. Conquest since then has come to a halt. Therefore, I do not intend to consider conquest in the present research since the two disputing parties have not resorted to war. There is no defeated and no victorious party. The reality is, though, that Iran used force to occupy the two islands of Greater and Lesser Tunb. This raises the question of the legality of the use of force to acquire territory between states. Does the use of force grant sovereignty over an occupied territory with the passage of time? The next section tackles this question.

¹³⁶ - *Oppenheim's*, op. cit., P.698.

¹³⁷ - *Ibid.* P.698-9.

¹³⁸ - See E. Kussbach, *Conquest*, EPIL, Vol.3, (1982), P.121.

4.3. The legality of the use of force in the acquisition of a territory

The international community has suffered heavily from the use of war between states as a legal way for the acquisition of territory. The resulting great human and material losses thus encouraged the international community to limit the use of wars as means of acquiring sovereignty over territories. This is obvious in all decisions, conventions and treaties made by the international community since 1907 which call for putting an end to wars and to use peaceful means to solve regional and border problems between states. The international community succeeded in this respect. With the conclusion of the United Nations Charter in 1945 the use of force or threat of force became forbidden by contemporary international law within the international community, and it was no longer possible legally to accept conquest as a legal means of acquiring sovereignty over territory.¹³⁹

4.3.1. Legal development of the prohibition of the use of force

The prohibition of force developed gradually within the international community. At the Hague Peace Conference of 1907, tentative and modest steps were taken to place the first legal restrictions upon the unqualified right of states to resort to war as an instrument of national policy. A resolution of the Second Hague Peace Conference in 1907 declared annexations null and void in cases where the conqueror refused the request of the vanquished to refer their dispute to a court of arbitration. On the same occasion, further efforts were made to limit the use of force in relations between States. Convention II of the 1907 Hague Conference, which was initiated by the American delegate Horace Porter and adopted on 16 October 1907, obliged the contracting powers 'not to have recourse to armed force for the recovery of contract debts'. Even though the scope of the Convention was limited to the use of force for

¹³⁹ - Jennings, op. cit., P.67.

the recovery of contract debts, and although exceptions from the general principle were provided for, it represented a first step towards a more general prohibition of war.¹⁴⁰

In 1919, the Covenant of the League of Nations laid down three articles which prohibited member states from resorting to war in disregard of certain procedures.¹⁴¹ First, under Article 12 (1) member states agreed that, if any dispute arose between them which was likely to lead to rupture, they would submit the matter either to arbitration or judicial settlement, or to enquiry by the Council, and they agreed in no case to resort to war until three months after the award by the arbitration or the judicial decision, or the report by the Council.¹⁴² Second, under Article 13 states agreed that a conflict was to submit suitable disputes to arbitration or adjudication, to carry out any award or decision rendered, and not to resort to war against a member state complying with the award or decision.¹⁴³ Third, under Article 15 any dispute likely to lead to rupture which was not submitted to arbitration or adjudication was to be dealt with by the League Council. If a report recommending terms for the settlement of the dispute was unanimously agreed to by the members of the Council, exclusive of the parties to the dispute, members of the League were obligated not to resort to war against a member state which complied with the recommendations of the report.¹⁴⁴

¹⁴⁰ - See L. Oppenheim, *International Law*, Vol.II, 7th edn., ed. H. Lauterpacht, (1952), P.179-80. Also J.M. Mossner, *Hague Peace Conferences of 1899 and 1907*, EPIL, Vol.3, (1980), P.204. Also E. Kussbach, *Conquest*, EPIL, Vol.3, (1980), P.121.

¹⁴¹ See the Charter of League of Nations in AJIL, Vol.13, (1919), P.113.

¹⁴² - Ibid. P.116. Also *Essential Facts about the League of Nations*, (1935), P.241. Also see G. Butler, *A Handbook to the League of Nations*, (1925), P.155.

¹⁴³ - AJIL, Vol13, op.cit., P.117. Also see Butler, op.cit., P.155-6.

¹⁴⁴ - Ibid. Also see Ibid. P.156-8. Also, *Essential Facts*, op. cit., P.242-3.

A clear prohibition of the acquisition of territory by force, however, seems explicitly to be contained in Article 10, which provided that “The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League”.¹⁴⁵ The effect of Article 10 was to prohibit absolutely the acquisition of territory by force, and to pledge League members to prevent such acquisitions or to reverse them when they occurred. Brownlie notes that “Article 10 of the Covenant provided cogent evidence that the right of conquest no longer existed”, since it prohibited the use of force with the motive of acquiring territory, even where a state had legal claims to that territory: “there is no very clear distinction between conquest and resort to war as the ultimate means of settling legal disputes over territory. This latter distinction was, however, made by the draftsmen of Article 10 of the League Covenant..., and self-help would seem to have been prohibited in regard to territorial disputes”.¹⁴⁶ In this sense, external aggression within the terms of Article 10 was inclusive of any war aiming at or resulting in the forcible transfer of territory; for all such transfers were prohibited under Article 10.¹⁴⁷

Under these Articles it seems that the Covenant had not abolished war but restricted and delayed it for a period of time.¹⁴⁸ Korman concludes: “The Covenant of 1919 had stopped short of making all aggressive war illegal: its provisions were intended to prevent war by providing means for the peaceful settlement of

¹⁴⁵ - Ibid. P.116. Also see Ibid. P.154. Also Ibid. P.240.

¹⁴⁶ - I. Brownlie, *International Law and the Use of Force by States*, (1963), P.217.

¹⁴⁷ - S. Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice*, (1996), P.183.

¹⁴⁸ - Taha, *al-Qanwn*, op. cit., P.34.

international disputes, but war was still acknowledged as a legitimate means of settlement when modes of peaceful settlement had failed”.¹⁴⁹

On 27 August 1928, in an attempt to reinforce the prohibition of war between states, the General Treaty for the Renunciation of War (also known as the Kellogg-Briand Pact or the Pact of Paris) was agreed upon by sixty-three states, declaring that they condemned ‘recourse to war for the solution of international controversies’ and renounced it ‘as an instrument of national policy in their relations with one another’.¹⁵⁰ Under Article 2 of the treaty the states agreed “that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means”.¹⁵¹

The implications of the Kellogg-Briand Pact for the acquisition of territory by force as a result of victory in a lawful war against violators of the Pact has been summed up by Brownlie as follows: “Lawful belligerents conducting and winning a war of sanction may impose restrictions intended to prevent recrudescence of aggression and use force to ensure observance of restrictions imposed”.¹⁵² Whereas Article 10 of the League Covenant had prohibited any forcible acquisition of territory, even as the result of collective action taken against an unlawful aggressor:

This prohibition would not...apply to a war of sanction leading to the imposition of measures of security on the aggressor by states acting in the name of the international community. Measures of security intended to prevent future threats to the peace may include movement of populations and frontier changes...On the hypothesis that the Second World War involved a war of sanction against the Axis States, the territorial provisions relating to East Prussia and the

¹⁴⁹ - Korman, *op. cit.*, P.191.

¹⁵⁰ - See Article 1 of the Treaty in UKTS, No.29, (1929), Cmmd.3410. Also LNTS, Vol.94, P.57. Also see Harris, *op. cit.*, P.819.

¹⁵¹ - *Ibid.*

¹⁵² - Brownlie, *Use of Force*, *op. cit.*, P.336.

Oder-Neisse territories in the Potsdam Agreement provide an example of measures of this sort.¹⁵³

The Kellogg-Briand Pact was more restrictive than the League Covenant in its prohibition of the resort to war by states, it was less so in the allowance it made for forcible territorial changes when resulting from victory in a war of sanction against an aggressor.¹⁵⁴

One of the consequences of the illegality of the use of force was that states refused to recognize territorial changes based on the title of conquest. The most celebrated case of non recognition occurred in January 1932; Mr. Stimson, United States Secretary of State, enunciated a doctrine of non-recognition. This declaration of policy was due to events in the Far East. In 1931, Japan, then a member of the League of Nations, invaded Manchuria which was legally under the sovereignty of China. Subsequently, the Japanese forces overran and conquered Southern Manchuria. The United States refused to recognise this new situation or any treaties with China legalising it and, to clarify this attitude, Mr. Stimson, in a communication to the Chinese and Japanese Governments, announced that:

The United States cannot admit the legality of any situation de facto nor does it intend to recognise any treaty or agreement between those Governments, or agents thereof, which may impair the treaty rights of the United States ...and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928.¹⁵⁵

On 11 March 1932, the Assembly of the League of Nations adopted the following resolution with the abstention of China and Japan “The Assembly...declares that it is incumbent upon the Members of the League of Nations not to recognize any

¹⁵³ - Ibid. P.409 and n.3.

¹⁵⁴ - Korman, op. cit., P.199.

¹⁵⁵ - See A.D. McNair, The Stimson Doctrine of Non-Recognition: A note on its Legal Aspects, BYbIL, Vol.14, (1933), P.65.

situation, treaty, or agreement which may be brought about by means contrary to the Covenant to the League of Nations or to the Pact of Paris”.¹⁵⁶

Following the Second World War, the abolition of the ‘right of conquest’ or threat by use of force by states has clearly been reaffirmed in Article 2 (4) of the United Nations Charter which reads as follows:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Under this Article the prohibition is not confined to the use of force but extends to the threat of force. Moreover, the prohibition, on a literal reading at least, is backed by a system of collective sanctions against any offender, as Article 51 provides:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

With the renunciation of war and the use of force, conquest became no longer a legal means for acquiring territory as an unlawful act cannot normally produce a result beneficial to the law-breaker.¹⁵⁷ The renunciation of war has been confirmed in many statements and resolutions, particularly the ones concerning the Middle East occupied territories. For example, Security Council Resolution 242 of 22 November 1967, emphasises ‘the inadmissibility of the acquisition of territory by war’ and

¹⁵⁶ - Ibid.

¹⁵⁷ - See *Oppenheim's*, op. cit., P703-4.

affirmed that the Charter principles required ‘withdrawal of Israeli armed forces from territories occupied in the recent conflict’.¹⁵⁸

The principle was regarded as axiomatic in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly Resolution 2625 (XXV) of 24 October 1970. The first section of the Declaration, which concerns the principle that states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations, shows, in paragraph 10, how states interpret the Charter’s prohibition of the use of force and its consequences for belligerent occupation and acquisition of territory:

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another state resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal. Nothing in the foregoing shall be construed as affecting:

- (a) Provisions of the Charter or any international agreement prior to the Charter regime and valid under international law; or
- (b) The powers of the Security Council under the Charter.¹⁵⁹

The United Nations General Assembly Resolution 2949 (XXVII) of 8 December 1972, also reaffirms “that the territory of a state shall not be the object of occupation or acquisition by another state resulting from the threat or use of force”.¹⁶⁰

In connection with Article 39 of the Charter, efforts have been made within the United Nations to define the notion of ‘act of aggression’. They finally resulted in

¹⁵⁸ - YbUN, Vol.21, (1967), P.257-8. Also see Harris, *op. cit.*, P.205-8.

¹⁵⁹ - ILM, Vol.9, (1970), P.1294. Also see Brownlie, *Basic*, *op. cit.*, P.36 . Also Harris, *op. cit.*, P.1005.

¹⁶⁰ - YbUN, Vol.26, (1972), P.180.

Resolution 3314 (XXIX) which was adopted by the United Nations General Assembly on 14 December 1974.¹⁶¹ Article 1 of the Resolution defines aggression as:

the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.¹⁶²

Under Article 3 (a) of this resolution, the acts which qualify as an act of aggression were emphasised as:

The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.¹⁶³

Moreover, the resolution of the General Assembly of 5 February 1982, at its ninth emergency special session, declared “that Israel’s decision of 14 December 1981 to impose its laws, jurisdiction and administration on the occupied Syrian Golan Heights constitutes an act of aggression under the provisions of Article 39 of the Charter of United Nations and General Assembly resolution 3314 (XXIX)”.¹⁶⁴

Even if a lawful use of force (use of force in self-defence according to Article 51 of Charter), would fall outside the prohibition of the acquisition of territory by force, it is impossible to conceive of self-defence as justifying the acquisition of title to territory because the use of force in this situation may justify temporary occupation of territory but never the permanent acquisition of title.¹⁶⁵

¹⁶¹ - See ILM, Vol.14, (1975), P.588.

¹⁶² - ILM, Vol.13, (1974), P.713. Also see Harris, op. cit., P.877.

¹⁶³ - ILM., Vol.13, (1974), P.713.

¹⁶⁴ - YbUN, Vol.36, (1982), P.515.

¹⁶⁵ - See *Oppenheim's*, op. cit., P.703 . Also D.W.Bowett, *International Law Relating to Occupied Territory*; A Rejoinder, LQR, Vol.87, (1971), P.473. Also Jennings, op. cit., P.55-6.

Again, on 18 November 1987 the General Assembly resolution 42/22 containing the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, declared that:

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any state, or from acting in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and of the Charter of the United Nations and entails international responsibility.¹⁶⁶

4.3.2. Non-recognition of acquisition of territory by the threat or use of force

With regards to the inefficiency of the collective system under the United Nations, questions arise concerning the fate of territory occupied by the use of force against the rule of international law, from which the international community was not able to force the occupying state to depart. Is it permissible that the occupying state acquires territory based on the recognition of the international community, or the absence of opposition on the part of the members of the international community, or based on acquisitive prescription?¹⁶⁷

Jennings suggests that the title in this case can be acquired through consolidation which depends on the procedure of international recognition as a legal means to acquire territory, including those territories acquired by force. Consolidation does not require the acquiescence of the occupied territory but the acquiescence and approbation of third states generally. Jennings finds that there is not any difference between a title created by illegal force and a procedure for

¹⁶⁶ - ILM, Vol.27, (1988), P.1673.

¹⁶⁷ - Taha, *al-Qanwn*, op. cit., P.37.

recognition of title by the international community because, in this case, the international community would be exercising a quasi-legislative function.¹⁶⁸ But if the reaction of third states was an attitude of non-recognition, Jennings adds, “in these circumstances it seems illogical to suppose that any form of prescription even by adverse possession could begin to run”.¹⁶⁹

Taha sees that Jennings’ proposals mean a renewal of conquest, in an indirect way, as a title to acquire territory. Moreover, these proposals contradict the international law rule which obliges the international community not to recognize any territorial acquisitions or alterations which result from the use of force.¹⁷⁰

Therefore, since the adoption of the United Nations Charter in 1945, followed by the establishment of the United Nations as a working body, there has been a discernible trend towards a doctrine of the non-recognition of territorial changes that have resulted from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations (such threat or use of force is prohibited by Article 2 (4)). This is reflected in a number of internationally recognized Articles and resolutions. Article 17 of the Charter of the Organization of American States, of 30 April 1947, states that:

The territory of a state is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another state, directly or indirectly, on any grounds whatever. No territorial acquisition or special advantages obtained either by force or by other means of coercion shall be recognized.¹⁷¹

¹⁶⁸ - Jennings, *op. cit.*, P.61-8.

¹⁶⁹ - *Ibid.* P.67-8.

¹⁷⁰ - Taha, *al-Qanwn*, *op. cit.*, P.37.

¹⁷¹ - AJIL, Vol.46, (1952), P.43.

Also Article 11 of the Draft Declaration on the Rights and Duties of States, prepared by the International Law Commission in 1949, provides that every state is under a duty to refrain from recognising any territorial acquisition by another state obtained through the threat or use of force against the territorial integrity or political independence of another state, or ‘in any other manner inconsistent with international law and order’.¹⁷² The same principle is included in Article 52 of the Vienna Convention on the Law of Treaties 1969, “A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations”.¹⁷³

The illegality of forced transfers of territory, and the obligation of non-recognition of forced acquisitions, is expressly asserted in the 1970 Declaration on Principles of International Law, which provides, in paragraph 10, that “the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal”.¹⁷⁴ Moreover, the 1974 Definition of Aggression, which includes, as part of that definition, “any annexation by the use of force of the territory of another state or part thereof”,¹⁷⁵ affirms in Article 5 paragraph 3 both the illegality of forced acquisitions and the obligation of non-recognition: “No territorial acquisition or special advantage resulting from aggression are or shall be recognized as lawful”.¹⁷⁶

The non-recognition of the use of force was also stressed by the General Assembly resolution of 5 February 1982, which determines that: “all actions taken

¹⁷² - YbILC, Vol.2, (1949), P.288.

¹⁷³ - UKTS, No.58, (1980), Cmnd.7964. Also Brownlie, *Basic*, op. cit., P.388.

¹⁷⁴ - ILM, Vol.9, (1970), P.1294. Also see Harris, op. cit., P.1005.

¹⁷⁵ - See Article 3 (a) ILM, Vol.13, P.713.

¹⁷⁶ - Ibid. P.714. Also see Harris, op. cit., P.877.

by Israel to give effect to its decision relating to the occupied Syrian Golan Heights are illegal and invalid and shall not be recognized".¹⁷⁷ A further General Assembly resolution 42/41 of 18 November 1987 states that:

Neither acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation.¹⁷⁸

One more example of the non-recognition of the use of force occurred on 18 August 1990, when the United Nations Security Council unanimously adopted Resolution 662, in which the Council decided that the declared Iraqi annexation of Kuwait 'under any form and whatever pretext has no legal validity, and is considered null and void'. All states and institutions were called upon not to recognize the annexation, and to refrain from actions which might be interpreted as indirect recognition.¹⁷⁹

Even though an unlawful act cannot normally create legal title to a territory in international law, states may recognise illegal acquisition with the passing of time, if there was no protest during a reasonable period of time and the consequence resulting from this recognition was the creation of a new situation of legality.¹⁸⁰ This is what Israel has tried to do in the occupied territories of the West Bank and Golan Heights by creating a situation of *fait accompli* through changing the population characteristics of these territories and demolishing villages, but also by building settlements and towns in these areas, or by emptying them of their Arab

¹⁷⁷ - YbUN, Vol.36, (1982), P515.

¹⁷⁸ - ILM, Vol.27, (1988), P.1673.

¹⁷⁹ - ILM, Vol.29, (1990), P.1327-8. Also see R. Laval, The Law of the United Nations and the Use of Force, Under the Relevant Security Council Resolution of 1990 and 1991, to Resolve the Persian Gulf Crisis, NYbIL, Vol.23, (1992), P.3.

¹⁸⁰ - Sultan and Ratib and Amer, op. cit., P.668.

population, driving them into neighbouring Arab countries and preventing them from returning.¹⁸¹

4.4. *Historical consolidation of title*

Awards of international courts show that it is not easy to define whether a disputed territory was awarded to a state on the basis of acquisitive prescription or occupation, as the method followed by international courts has been to compare and weigh contradicting sovereignty claims. The courts then uphold the stronger evidence, without paying attention to the mode of acquisition of territory.¹⁸² In the *Eastern Greenland* case, for example, the Court admitted that in many cases tribunals had been satisfied 'with very little in the way of actual exercise of sovereignty rights, provided that the other state could not make out a superior claim'. In such circumstances, although theory lays down methods of acquiring territory, tribunals are usually concerned with deciding between rival claims neither of which might satisfy such theoretical requirements.¹⁸³

Therefore, some authors have suggested freeing territorial acquisition from the limitations of private law, thus making it more suitable for practical reality. Following this line, Charles de Visscher suggested the concept of historical consolidation. The idea is a trial to bring together all the elements which led to territorial acquisition in one operation. He described it as follows:

The fundamental interest of the stability of territorial situations from the point of view of order and peace explains the place that consolidation by historic titles holds in international law and the suppleness with which the principle is applied. It is for these situations, especially, that arbitral decisions have sanctioned the principle *quieta non movere*, as much out of consideration for the

¹⁸¹ - Ibid. P.668-9.

¹⁸² - Greig, op. cit., P.164. Also see Jennings, op. cit., P.23.

¹⁸³ - PCIJ, Ser. A/B, No.53, (1933), P.46.

importance of these situations in themselves in the relations of states as for the political gravity of disputes concerning them.¹⁸⁴

Charles de Visser was inspired by the award of the International Court of Justice concerning the *Norwegian Fisheries* case¹⁸⁵ in which he himself was a judge. The case concerned the method used by Norway to define its territorial sea. Instead of using the coastlines of the islands to measure its territorial sea, it invented in 1898 a delimitation method based on straight lines between the projection of the coast or outer edges of islands. Accordingly, Norway included in its territorial water parts of the high sea. Therefore, the Court had to decide whether the Norwegian method of delimiting territorial waters was valid on the basis of an historic title, even if it should be held-which, in fact, it was not-that the method was invalid under general international law. In its opinion, the Court ruled:

Norway can justify the claim that these waters are territorial or internal on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other states, a kind of *possessio longi temporis*, with the result that her jurisdiction over these waters must now be recognized although it constitutes a derogation from the rules in force.¹⁸⁶

After thus stating the Norwegian government's attitude, however, the Court did not expressly indicate whether it approved this attitude or not. But, having regard to the general tenor of the judgment, it seems reasonable to conclude that the Court did approve it. The Court also made the following observations on the question of Norway's historic title:

From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign states.

Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and

¹⁸⁴ - C. de Visser, *Theory and Reality in Public International Law*, English translation by P.E. Corbett, (1968), P.209.

¹⁸⁵ - ICJ Rep., (1951), P.116.

¹⁸⁶ - Ibid. P.130.

in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States. ...The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom.¹⁸⁷

Therefore, Professor Charles de Visscher interpreted the term 'consolidation' as "proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given state".¹⁸⁸ Blum has defined 'historical title' as "the possession by a State, over certain land or maritime areas, of rights that would not normally accrue to it under the general rule of international law, such rights having been acquired by that State through a process of historical consolidation".¹⁸⁹

Consolidation by historic title thus differs from the other modes of acquisition of territory; as Blum says "all the other titles rest on an instantaneous act having an immediate effect, to which act the origins of such titles can be traced, the historic title is the outcome of a lengthy process comprising a long series of acts, omissions and patterns of behaviour which, in their entirety, and through their cumulative effect, bring such a title into being and *consolidate* it into a title valid in international law".¹⁹⁰ Professor Charles de Visscher pointed that such consolidation differs from acquisitive prescription in the sense that it can apply to territories that could not be proved to have belonged formerly to another state. It also differs from occupation in that it can be admitted in relation to parts of the sea, as well as to land.

¹⁸⁷ - Ibid. P.138-9.

¹⁸⁸ - Visscher, op. cit., P.209.

¹⁸⁹ - Y.Z. Blum, Historic Rights, EPIL, Vol.7, (1984), P.120.

¹⁹⁰ - Y.Z. Blum, *Historic Titles in International Law*, (1965), P.335.

This consolidation is also distinguished from international recognition by the fact that it can be held to be accomplished not only by acquiescence, acquiescence in which the time factor can have no part, but more easily by a sufficiently prolonged absence of opposition either in the case of land or in maritime waters.¹⁹¹

Although consolidating factors are important, it is still the fact of possession that is the foundation and the *sine qua non* of the process of consolidation. Therefore, the process cannot begin to operate until actual possession is first enjoyed. Furthermore, it may not always be easy to distinguish between evidence of true legal title and evidence of an alleged political right or claim to have the title transferred. Thus, the process of consolidation cannot begin unless and until actual possession is already an accomplished fact and, although no time is laid down, it remains true that it cannot be completed until a considerable period of time has elapsed.¹⁹²

The introduction of the notion of 'consolidation' as a mode of acquiring territory has, according to Schwarzenberger, thrown light on the process of 'evolution and expansion of international society'. He makes the point that by having recourse to the concept of consolidation, three essential features of this process become apparent. "First, consolidation of title is normally a gradual process. Secondly, in the beginning, every title is necessarily a relative title, and its holder aspires to transform it into an absolute title. Thirdly, the more absolute a title becomes, the more it rests on multiple foundations".¹⁹³

¹⁹¹ - Ibid. For more exposition of this point see D.H. Johnson, Consolidation as A Root of Title in International Law, CLJ, (1955), P.215-25. Also Brownlie, *Principles*, op. cit., P.166. Also Blum, *Historic Titles*, op. cit., (1965), P.336.

¹⁹² - Jennings, op. cit., P.26.

¹⁹³ - Schwarzenberger, op. cit., P.311.

However, according to our explanation of the concept of historic title, we can see that there are similarities between the conditions for the acquisition of territory according to acquisitive prescription and the acquisition of territory according to historic title. As mentioned earlier, when discussing the acquisition according to acquisitive prescription,¹⁹⁴ the same conditions are required for the acquisition by historic title; namely, there must be a display of state authority, the absence of recognition of sovereignty in favour of another state, and that this practice of sovereignty should be public, peaceful and continuous for a period of time.¹⁹⁵

Despite all this, the idea of historic consolidation to a title has not always been accepted by some authors. Munkman, for example, doubted that the notion of consolidation could be relied upon in any dispute. In her opinion, it is no more than a vague notion, which adds one to the many traditional reasons for acquiring territorial sovereignty over a particular territory. Munkman also observed that the notion of consolidation does not explain the essence of mixed interests and relations. It also requires the passing of time, as it is always built on 'long use' and 'long absence of opposition'.¹⁹⁶

O'Connell thinks that de Visscher did not differentiate between the acquisition of territorial sovereignty according to international law, as is the case in territories without a previous owner *res nullius*, and acquiring territorial sovereignty against international law. O'Connell, therefore, prefers to refer to the first situation as

¹⁹⁴ - Above, P.82.

¹⁹⁵ - See Blum, *Historic Rights*, op. cit., P.122-4. Also see M.A.A. Al-Said, *Mda Mshrwait Asanid al-Siadh al-Israeilih fi Flstin: Drash fi Itar al-Qanoun al-Dawli al-Aam (The Extent of the Legality of the basis of Israeli Sovereignty in Palestine: a study within the framework of the Public International Law)*, (1975), P.46.

¹⁹⁶ - A.L.W. Munkman, *Adjudication and Adjustment-International Judicial Decision and the Settlement of Territorial and Boundary Disputes*, BYbIL, Vol.46, (1972-3), P.103-4.

‘occupation’, and to the second as ‘historic right’.¹⁹⁷ The term ‘historic right’, according to O’Connell, means a right which was acquired against international law, through historic practice by a state, which was originally not legitimate, where the international community did not object to this practice.¹⁹⁸

4.5. The legality of methods of the disputing parties in the acquisition of sovereignty over the three islands

4.5.1. The legality of the Iranian occupation of the three islands

It is clear, from our definition of the dispute between Iran and the UAE, that the three islands of Abu Musa, Greater Tunb and Lesser Tunb were not undiscovered at the time of the Iranian occupation in November 1971.¹⁹⁹ The evidence for this is the frequent trips made to the islands by fishermen from Sharjah in 1864, according to Captain C.G. Constable of the British Navy in India. Another pure piece of evidence is the British observation that the ships of the Qawasim were based in the two islands of Abu Musa and Greater Tunb during the conflict between the British and the Qawasim over the control of the Gulf. Furthermore, the two islands Abu Musa and Greater Tunb were inhabited by UAE citizens when Iranian troops occupied the islands.²⁰⁰

¹⁹⁷ - O’Connell, op. cit., P.406-7 and 421.

¹⁹⁸ - Taha, *al-Qanwn*, op. cit., P.33.

¹⁹⁹ - See M.A. Al-Roken, Historical and Legal Dimensions of the United Arab Emirates-Iran Dispute over Three Gulf Islands, <http://www.uaeinteract.com/gov/three.html>, (1996), P.7. Also see the same writer, *al-Buad al-Tariky wa al-Qanwni Lkelaf ben Dawlat al-Imarat al-Arabiah al-Mutahidah wa Iran Hwl al-Juzur al-Thalath (Historical and Legal Dimensions of the United Arab Emirates-Iran Dispute over Three Gulf Islands)*, Al-Taawun, No.28, (1992), P.16. Also see the same writer, *al-Buad al-Tariky wa al-Qanwni Lkelaf ben Dawlat al-Imarat al-Arabiah al-Mutahidah wa Iran Hwl al-Juzur al-Thalath (Historical and Legal Dimensions of the United Arab Emirates-Iran Dispute over Three Gulf Islands)*, a paper submitted to the Conference of the Peace Islands, (1994), P.2.

²⁰⁰ - See Chapter 3, P.38 and 57.

Can we accept that the three islands were under Iranian sovereignty before the British existence in the Gulf region, and that they were neglected by the Iranians, according to the Iranian claim?²⁰¹ The question which arises is whether Iran possessed sovereignty over the islands or not. And where is the evidence for this? Blum suggests that the answer should result from answering the following three questions:

- (a) Has the exercise of authority been continuous?
- (b) Has authority been exercised 'with the intention and will to act as sovereign'.
- (c) Is there sufficient evidence of the manifestation of State authority in a manner appropriate in the circumstances?²⁰²

He is of the opinion that if the answers to these questions are in the affirmative; then we are faced with an effective actual sovereignty practiced by the state.

It goes without saying that one of the conditions of the occupation of any territory is "effectiveness"-that is, the actual practicing of sovereignty over that territory by the claimant state. The mere discovery of territory is not enough to acquire sovereignty over the discovered territory. The history of the three islands does not show any actual sovereignty by Iran. It has been proven by British documents that since 1750 the Iranians have not practiced sovereignty over the islands.²⁰³

As mentioned, Iranian troops occupied the two islands of Greater and Lesser Tunb on 30 November 1971. On the previous day the governments of Iran and Sharjah had agreed to sharing between them the administration of the Abu Musa

²⁰¹ - J. Mumtaz, *al-Wda al-Qanwni Lbad Juzur al-Khaleej: Abu Musa w-Tunb al-Kbry w-al-Sghry*(**Legal Status of Some Gulf Islands: Abu Musa, and Greater and Lesser Tunbs**) *Shu'un al-Awsat Journal*, No.47, December (1995), P.61.

²⁰² - Blum, *Historic Titles*, op. cit., P.110.

²⁰³ - See Chapter 3, P.63.

island.²⁰⁴ The governments of Sharjah and Ras al-Khaimah did not transfer their sovereignty over the islands to Iran.

Concerning the Memorandum of Understanding over the island of Abu Musa, this did not state that the government of Sharjah transferred its sovereignty over the island to Iran, despite the use of the term 'claim' instead of 'sovereignty' which was much more appropriate. The choice of the term 'claim' was probably to find an equilibrium between the legal rights of Sharjah and the Iranian political claims.²⁰⁵

Article 2 (a) of the Memorandum of Understanding confirms the sovereignty of Sharjah over the island, as it states that Iran will enjoy a mere 'jurisdiction' over the part which would be occupied by its troops, and not 'sovereignty'.²⁰⁶ The Memorandum describes the Iranian situation as follows: "They will occupy areas" and "Are occupied by Iranian troops", whereas the situation of Sharjah was described as follows: "Sharjah will have full jurisdiction".²⁰⁷

Therefore, the arrangements resulting from the Memorandum of Understanding which specify 'Co-Administration' are that Iran would carry out the administration of the area occupied by its troops, while Sharjah would carry out the administration of the remaining areas of the island. Further, the rights of searching for and producing oil, and fishing on its territorial waters, would be shared with the continuation of the full legal sovereignty of Sharjah until the dispute between the two countries was settled.²⁰⁸

²⁰⁴ - See the text of Memorandum of Understanding in Chapter 3, P.56.

²⁰⁵ - M.A. Shokri, *Msalt al-Juzur fi al-Khaleej al-Arabi wa al-Qanun al-Dawli* (The Case of the Islands in the Arabian Gulf and International Law), (1972), P.46.

²⁰⁶ - Ibid. P.46-7.

²⁰⁷ - Al-Roken, Historical and Legal Dimensions, op.cit., P.13.

²⁰⁸ - Shokri, op.cit., P.51-2.

On the other hand, Iran does not have the right to claim that Britain transferred its sovereignty over the three islands to Iran before terminating the treaties with the governments of the Trucial States (currently known as the UAE) and its withdrawal from the Gulf. Britain was never the owner of these islands. The Treaty of 1892 did not grant Britain the right of selling or transferring any of the territories within the boundaries of the Emirates which signed the treaty. Britain was granted, by the treaty, the right to manage the foreign affairs of the Emirates, without any right of ownership.²⁰⁹ As mentioned earlier, the court ruled in the *Palmas* case that: “Spain could not transfer more rights than she herself possessed”.

Iran may also claim, after a period of time since her occupation of the islands on 30 November 1971, her acquisition of sovereignty over the islands according to ‘acquisitive prescription’. Such a claim, however, does not fulfil the conditions for acquiring sovereignty over territory according to the principle of ‘acquisitive prescription’, which was explained earlier.²¹⁰

As for the island of Abu Musa, we have explained that Sharjah did not transfer its sovereignty over the island, according to the Memorandum of Understanding. Therefore, the administration of a part of the island by Iran cannot be considered a cause for acquisitive prescription over territory, no matter how long it exercises administration over the island. To acquire territory, administration must be carried out by its owner in order to practice its sovereignty over the territory. Moreover, Iran recognizes that sovereignty over this island has not been finally settled.²¹¹

Concerning the two islands of Greater and Lesser Tunb, the situation is that of occupation by the use of force, which does not fulfil the condition of peaceful

²⁰⁹ - See the text of Treaty in Chapter 2, P.28.

²¹⁰ - Above, P.82.

²¹¹ - See Chapter 9, P.222.

acquisition necessary for the awarding of sovereignty over territory according to the principle of acquisitive prescription. Moreover, the UAE has never acquiesced or kept silent over the Iranian occupation of the two islands. The UAE has registered its rejection of the occupation by all means, and claimed its rights of sovereignty over these islands from day one of the Iranian occupation on 30 November 1971. This has been achieved in many ways-such as by the resistance of the police force of Greater Tunb which belongs to Ras al-Khaimah; diplomatic protest by the sending of a telegram to the United Nations and raising the case in the Security Council on 9 December 1971. Since then, the UAE has not ceased to raise the issue of the Iranian occupation of the islands and its claim of sovereignty over them in all international and regional meetings.²¹²

4.5.2. The UAE is the rightful sovereign of the three islands

According to Dr. Shokri, the governments of Ras al-Khaimah and Sharjah fulfilled the conditions of actual and known acquisition of the islands before and during the British control of the Gulf, which proves their ownership of the islands by acquisitive prescription.²¹³ Dr. Al-Roken has a different point of view. He says:

While the majority of the conditions required for acquisitive prescription to hold exist, the last one raises doubts as to the very source and base of the UAE's title to the three islands. If applied in favour of the UAE, this condition may be seen as an implicit recognition of Iran's original claim to them. Impressively, this is not so, and therefore, the Emirates should not use this method due to the danger it involves.²¹⁴

Al-Roken argues that the UAE should base her legal right on the principle of 'immemorial possession'. He says:

²¹² - See Chapter 3, P.57-8.

²¹³ - Shokri, op.cit., P.30-1.

²¹⁴ - Al-Roken, Historical and Legal Dimensions, op.cit., P.11.

In such a case, the origin of the status quo remains unknown or doubtful. And since it is impossible to establish whether this status quo is legitimate or otherwise, evidence emerges supporting its legitimacy. The UAE has been holding the three islands for over two and half centuries and it is therefore impossible to prove whether or not this possession was legitimate at the time it occurred, namely the middle of the eighteenth century.²¹⁵

However, Bathurst and Ely argue that the UAE should base her sovereignty and legal ownership over the islands on the basis of the 'Historical Consolidation of Title', since the islands did not belong to any particular state before the emergence of the Qawasim as a regional power. Then the islands were controlled by the Qawasim who continued to rule the islands peacefully and effectively. During this period the two Emirates practiced all manifestations of sovereignty, such as the administration of public services, customs, mining and petroleum concessions as well as raising their flags on the islands.²¹⁶

In my view, the UAE's legal ownership of the three islands should be based on the evidence of her practicing sovereignty over the islands before Iran and present the case to an Arbitration or to the International Court of Justice. This point will be discussed in a separate chapter later on.²¹⁷

4.6. Conclusion

We conclude from the above that the two islands of Greater and Lesser Tunb were not a *terra nullius* at the time of their occupation by the Iranian troops on 30 November 1971, and that the government of Sharjah did not transfer her sovereignty over the island of Abu Musa to Iran by the Memorandum of Understanding.

²¹⁵ - Ibid.

²¹⁶ - M.E. Bathurst and N. Ely, & Messrs. Coward Chance, Sharjah's Title to the Island of Abu Musa, Submitted to His Highness Shaikh Khalid bin Mohamed Al-Qasimi Ruler of Sharjah and its Dependencies, Vol.I-Opinion, (1971), P.15-8.

²¹⁷ - See Chapter 8, P.182.

Moreover, Iran cannot base her sovereignty over the islands on the principle of acquisitive prescription after the passing of a period of time, since it did not occupy the islands by peaceful means. The rejection of the use of force according to the United Nations Charter has been manifested in many resolutions, the last of which was the refusal of the use of force to annex Kuwait to Iraq. One wonders, then, how Iran justifies its occupation of the two islands of Greater and Lesser Tunb. And on what basis does it share with Sharjah the administration of the island of Abu Musa?

CHAPTER FIVE

Analysis of the Iranian Claim of Sovereignty over the Three Islands

5.1. Introduction

The basis of Iran's claims of sovereignty over the three islands was rehearsed in the statements made by the Iranian representative to the United Nations Security Council at the meeting on 9 December 1971. He said: "The Iranian title to the islands was long-standing and substantial.... British maps marked them as being Persian. ... A highly authoritative encyclopedia, published as recently as 1967 to cover the events of the last 50 years, by another major power. ... They identified them as Iranian territory".¹ In addition, in June 1971, the Shah emphasized the islands' strategic importance for Iran.²

The aim of this chapter is to shed light on the Iranian claims for the three islands it occupied in 1971. The purpose is to know the extent of Iran's right to claim these islands. The chapter highlights two points. Firstly, the merits of Iran's claim to the three islands, and secondly, the refutation of Iranian arguments.

5.2. The merits of Iran's claim to the three islands

According to the Iranian representative's speech to the UN on 9 December 1971, the Iranian claim to the three islands is based on three arguments. The first is Iran's historical right to these islands. The second is the British recognition of Iranian sovereignty over the islands. The third is the strategic value of the islands for Iran.

¹ - SCOR, 26 Year, 1610 the Meeting: 9 December 1971, P.18.

² - The Times, 29 June 1971, P.7.

5.2.1. Historical right of ownership

Alleged historical rights are the first of Iran's claims to the three islands Abu Musa, and the Greater and Lesser Tunbs. The Iranian newspaper *Keyhan International* on 30 May 1970 reported "The three islands have belonged to Iran since time immemorial and have always formed an integral part of the country. About eighty years ago, the British Government, for imperialistic considerations, unlawfully and temporarily separated them from Iran by preventing Iran from exercising its established sovereign rights over them".³

Also, Iranian high officials showed on many occasions their insistence on Iran's historical claims of the three islands. When Zahedi, the Shah's Minister of Foreign Affairs in 1971, was asked about the Iranian claims for some islands in the Gulf, he replied that: "The islands had always been a part of Iran and they will continue to be so".⁴

The Shah in an interview with the Iranian newspaper *Keyhan International*, dated 23 October 1971, stated the following in connection with the Gulf: "what we are demanding is what has always belonged to our country throughout history ...It is perfectly natural and reasonable that, now that imperialism is withdrawing, Iran should regain what has always been its possession historically".⁵

The argument of historical claim by the government of Iran in support of its sovereignty over the three islands was stated as follows:

(i) The naming of the Gulf as the Persian Gulf is a proof that the coasts and islands of this Gulf belong to Iran. The first Iranian claim to the whole Gulf area

³ - Quoted in P. Mojtahed-Zadeh, Iran's Maritime Boundaries in the Persian Gulf, *The Boundaries of Modern Iran*, ed. by K. Mclachlan, (1994), P.119.

⁴ - *Al-Khaleej*, 29 June 1971.

⁵ - Quoted from SCOR, 26Year, 1610 the Meeting: 9 December 1971, P.5.

was officially announced in a letter from the Persian Prime Minister on 15 March 1844 addressed to the British government.⁶ The Persian Minister Haji Meerza Aghassi stated that the whole Gulf “from the commencement of Shatt Al-Arab to Muscat belongs to Persia, and all the islands of the sea, without exception, and without participation of any other government, belong entirely to Persia”.⁷

This argument is supported by statements of Arab and Muslim historians and geographers. As Dr. Mojtahed-Zadeh says: “All the works of the Arab and Muslim historians and geographers concerning the geography and history of the region of the Persian Gulf during the Islamic period emphasize that all the islands located in the Gulf belong to Iran. What the British have to do is to look up a book such as *Nuzhat Al-Qulub* by Hamd-Allah Mustafa to find the following: ‘The islands located between Sind and Oman in the Persian Gulf belong to Persia. The biggest of these islands are Qishm and Bahrain’”.⁸ In addition, Dr. Davoud Bavand said “the territories and islands of the Persian Gulf belonged to the 14th Satrapy of the empire [an old province in Iran] from 521-485 B.C.”.⁹

Therefore, this argument is based on the assumption that the political and military domination of Iran over the Gulf in successive periods meant that in ancient and medieval times the three islands would have had to belong to Iran.¹⁰

⁶ - R. Schofield, *Borders and Territoriality in the Gulf and the Arabian Peninsula during the Twentieth Century, Territorial Foundations of the Gulf States*, ed. R. Schofield, (1994), P.35.

⁷ - Quoted from SCOR, 26Year, 1610 the Meeting: 9 December 1971, P.5.

⁸ - *Aalam Al-Khaleej*, Monthly newspaper, No.31, January 1996, P.8. Also see P. Mojtahed-Zadeh, *al-Khlafat al-Hdwidh w-al-Iqlimih bin al-Aarab w-al-Iraniin* (Territorial and Boundaries Disputes between the Arabs and the Iranians), *al-Alaqat al-Arabih al-Iraniah: al-Itjahat al-Rahnih w-Afaq al-Mstqbl* (Arab Iranian Relationships: Present Directions and Future Horizons), Centre for Arab Unity Studies, (1996), P.494.

⁹ - D.H. Bavand, *The Historical, Political and Legal Bases of Iran's Sovereignty over the Islands of Tumbs and Abu Musa*, (1994), P.15.

¹⁰ - G. Mirfendereski, *The Ownership of the Tonb Islands: A Legal Analysis, Small Islands, Big Politics: The Tonbs and Abu Musa in the Persian Gulf*, ed. H. Amirahmadi, (1996), P.120.

(ii) Iran claims that the three islands had been owned by Iran before they were occupied by Britain in 1903¹¹ ‘on the assumption that they were essential to combat piracy’ in the Gulf. Great Britain had ‘in pursuit of its imperial interests’ considered the islands as belonging to the Arab Shaikhs of the Trucial States and had transferred them to the de facto administration of Sharjah and Ras al-Khaimah when Iran was ‘politically weak’.¹² The Iranian newspaper *Keyhan International* of 30 May 1970 which reported this argument on Iran’s historical sovereignty of the three islands stated: “The three islands have belonged to Iran since time immemorial and have always formed an integral part of the country. About eighty years ago, the British government, for imperialistic considerations, unlawfully and temporarily separated them from Iran by preventing Iran from exercising its established sovereign rights over them”.¹³ Also in a June 1971 interview, the Shah claimed that the three islands had been ‘grabbed’ at a time when Iran had no central government.¹⁴

An academic Iranian study explains the historic rights argument of ownership of the three islands as follows: “The islands were Iran’s, it was claimed, because they were under its sovereignty until eighty years ago. At that time, it was contended, Britain interfered with the exercise of this sovereignty by using force, and subsequently claimed the islands for its wards, Sharjah and Ras al-Khaymah. The islands were thus Iran’s for historical reasons, and their seizure under duress and

¹¹ - J. Mumtaz, *al-Wda al-Qanwni Lbad Juzur al-Kaleej: Abu Musa w-Tunb al-Kbry w-al-Sghry* (Legal Status of Some Gulf Islands: Abu Musa, and Greater and Lesser Tunbs), *Shu’un al-Awsat* Journal, No.47, December 1995, P.58.

¹² - *Border and Territorial Disputes*, ed. by J.B. Allcok, (1992), P.382-3. Also H.M. Al-Baharna, *The Arabian Gulf States*, (1975), P.341-2.

¹³ - Quoted in Mojtahed-Zadeh, A Political Geography of the Persian Gulf, The Islands of Tunb and Abu Musa, Unpublished Paper, (1992), P.25. See the same text in Mojtahed-Zadeh, *Political Geography of the Strait of Hourmuz*, (1990), P.20.

¹⁴ - D. Caldwell, Flashpoints in the Gulf: Abu Musa and the Tunbs Islands, MEP, Vol.IV, No.3, March (1996), P.52.

interference by an 'imperialist' power could not diminish its sovereignty. Nor could the 'imperialist' country on its departure seek to perpetuate its 'colonialist legacy' by ceding Iran's property to other states".¹⁵

The likelihood of the belonging of the three islands to Iran appears even stronger at a time when the Iranian domination extended to the lower coast of the eastern Gulf, thereby placing the islands at least theoretically under Iranian sovereignty. The political and commercial domination of Iran over the Gulf was in the times of the Seleucid (312-150 B.C.), Parthian (238 B.C.-A.D. 224), Sassanid (A.D. 224-641), Buyid (A.D. 945-1055), Seljuq (A.D. 1055-1194), until the arrival of the Portuguese in the Gulf in the early 1500s. Iranian dominion in the Gulf as the local rulers of Hormuz remained unabated. With the exception of an occasional internecine quarrel regarding succession or disagreement with the Iranian central or provincial authority, very little change, if any, seems to have occurred in regard to the control of Hormuz over the coasts and islands of eastern Gulf.¹⁶

Therefore, Dr. Mumtaz sees that at the time of the British occupation of the three islands in 1903, these islands were not without an owner; therefore they were not *terra nullius*, they actually belonged to Iran. He alleges that they were neglected by the Iranian government because of the scarcity of inhabitants on the island of Abu Musa. Greater Tunb was only used by fishermen and the Lesser Tunb was uninhabited because of its lack of drinking water. Further, he argues that Iran's negligence of practicing its control over the islands had not lead to the loss of its sovereignty over them, and therefore they were not legally available for occupation.¹⁷

¹⁵ - S. Chubin and S. Zabih, *The Foreign Relations of Iran*, (1974), P.222-3.

¹⁶ - Mirfendereski, op. cit., P.120-2.

¹⁷ - Mumtaz, op. cit., P.58-9.

(iii) The heart of Iran's claim over the three islands has been based on the fact that the Qawasim Shaikhs of Lingah were for a long time Iranian subjects governing Lingah as Iranian officials. Therefore, the Iranian government suggested that it was in this capacity that they had administered the three islands, which had thereby become Iranian territory.¹⁸ In addition, the Qawasim Shaikhs of Lingah, in the meantime, demonstrated their loyalty to the Iranian government throughout their history at Lingah, and assisted Iranian expeditions on various occasions against rebellious Arab tribes of the region.¹⁹

5.2.2. British maps as recognition of Iranian sovereignty

Iran also claims sovereignty over the three islands, Abu Musa and the Tunbs islands, on the basis of several British maps, which colour the islands the same as the Iranian border. The Iranian representative to the United Nations stated rhetorically, "For more than a century, beginning in 1770, British maps marked the Tunb islands as being Persian. A mistake can be made once, perhaps, but what sort of mistake is it that can be made for 120 years?"²⁰

This Iranian argument based on British maps had been advanced before by the Shah of Iran Mohammed Reza in an interview aboard a private flight taking him to a winter vacation in Switzerland in early February 1971; he stated: "They [the three islands] belonged to us and we have British Admiralty maps and other documents to prove it".²¹

Thus, Iran's argument is based on a number of official and semi-official British maps published since 1770, as well as an unofficial map of Persia prepared under

¹⁸ - See IMBG, op. cit., Vol.7, 1920-1930, P.474.

¹⁹ - See Mojtahed -Zadeh, A Political Geography of the Persian Gulf, op. cit., P.14.

²⁰ - SCOR, 26 year, 1610 the meeting: 9 December 1971, P.18.

²¹ - The Glasgow Herald, 17 February 1971, P.9.

the auspices of Lord Curzon in 1892, and the Survey of India Map of 1897.²² But Iran's particular claim to the islands is based on a map of Persia prepared in 1886 by the Intelligence Branch of the British War Office.²³ This shows the Abu Musa and Tunbs islands in the same colours as that of the Iran border. A copy was presented to Nasir al-Din Shah as a gift by the British Minister in Tehran during the summer of 1888 on the instruction of British Foreign Secretary, Lord Salisbury.²⁴ Nasir al-Din Shah and subsequent rulers of Iran have referred to the map in connection with the Iranian claim to the three islands.

5.2.3. *The strategic value to Iran of the three islands*

The Iranian claim of the strategic importance of the three islands began after the announcement of the British withdrawal from the Gulf in 1968. Iran argued that the security of the Gulf and its navigation corridors was its responsibility. It was, therefore, essential that Iran controlled the islands because of their location at the entrance to the Gulf. This was proposed by Asadollah Alam, Iran's Royal Court Minister, to the Shah. As he said in his diary for 10 November 1969: "Audience. Reported yesterday's conversation with ambassador. When I came to his remarks about the islands, HIM [His Imperial Majesty] nearly exploded; 'He's talking out of his arse', he exclaimed, 'the islands belong to us'. 'We must try to be pragmatic', I said, 'Your Majesty's chief interest lies in occupying the islands to facilitate our defence of the Persian Gulf. You have already declared that any oil found there

²² - See IMBG, op. cit., Vol.7, 1920-1930, P.337.

²³ - See The Three Iranian Islands in the Persian Gulf, MEQ (Center for Scientific Research and Middle East Strategic Studies), Vol.1, No.2, Fall (1994). Also Bavand, op. cit., P.58. Also Schofield, op. cit., P.35. Also Vinson & Elkins, Attorneys at Law, Report on the Tunb Islands, Submitted to Ras al-Khaimah Government, Houston-Texas, (1980), P.3.106.

²⁴ - See this map in The British Library at Shelf mark No. 50970 (41) and in Oriental and India Office Collections at Shelf mark No. W/LPS/21/B10/106. Also see Appendix B, Map 4, P.298.

could be shared between us and the Arabs. In other words we are after occupation, not total possession”.”²⁵

The strategic importance of the islands for Iran to guarantee the security of the Gulf became one of the reasons behind Iranian claims over the three islands. This was assured by the Shah when he said: “They are of strategic importance to us as much as to the Persian Gulf states and to the peace and security of our region. Their geographic position can make them issues of tremendous military value”.”²⁶

After the Iranian occupation of the Tunbs islands on 30 November 1971, the Iranian representative to the UN Security Council Mr. Afshar justified the occupation by virtue of the geographic proximity of the islands to the Iranian coast more than to the UAE coast. He said: “these islands form part of a group of islands, virtually constituting an archipelago, all of which have always been part of Iran. Moreover, the Greater Tunb lies only 17 miles from the Iranian mainland and the Lesser Tunb 22 miles off-shore. On the other hand, both islands lie almost 50 miles away from Ras al-Khaimah on the other side of the Persian Gulf”.”²⁷

The Iranian occupation of the three islands, because of their strategic importance, is based on the following reasons:

(i) To guarantee the security of Iran shores and waters, international navigation and Iranian national security after the British withdrawal from the region and the weakness of the Gulf States, Iran claims it is necessary that it controls the three islands. This is to ensure that the Strait of Hormuz stays open to navigation, as it is the only outlet for Iranian oil. This was also seen as essential to prevent the Gulf

²⁵ - A. Alam, *The Shah and I: The Confidential Diary of Iran's Royal Court 1969-1977*, ed. A. Alikhani, (1991), P.101.

²⁶ - Quoted in Mojtahed-Zadeh, *Political Geography of the Strait of Hourmuz*, op. cit., P.19.

²⁷ - SCOR, 26 year, 1610th Meeting: 9 December 1971, P.18.

from falling under communist influence. Foreign Minister Ardeshir Zahedi stated on 12 November 1970, "Look to the Chinese communists in Aden. If these islands go, all our interests will be damaged".²⁸ The same justification was used by the Shah: "Their geographical position can make them issues of tremendous military value. Only the other day the South Yemenis issued a communiqué vowing to bring revolution to the whole region of the Persian Gulf".²⁹

The same argument was put on its head after the fall of the Shah and the arrival of Khomeini to power. This time, Iranian national security was to be protected from United States' influence in the Gulf. Abu al-Hassan Bani Sadr, the first president of the Islamic Republic of Iran, stated in March 1980: "At the end of the Gulf there is the Strait of Hormuz through which oil passes. They [the Arab Gulf governments] are afraid of our revolution. If we allow them to have the islands they will control the Strait. In other words the United States would control the waterway ...Is it possible to give such a gift to the United States? If all of them, the littoral states of the Gulf, were independent, we would have returned the islands to them".³⁰

(ii) The second point which Iran used to justify its occupation of the islands for strategic reasons, is that the proximity of the Tunbs islands to the Iranian mainland provides evidence of Iran's sovereignty over the islands.³¹

5.3. *The refutation of the Iranian arguments*

After reviewing the Iranian arguments concerning Iran's rights over the three islands, one should question the strength of the Iranian historical arguments over the

²⁸ - MEJ, Vol.XXV, No.2, (1971), P.234-5.

²⁹ - Quoted in Mojtahed-Zadeh, *Political Geography of the Strait of Hourmuz*, op. cit., P.19.

³⁰ - Quoted in H.H. Al-Alkim, *The Foreign Policy of the United Arab Emirates*, (1989), P.160. Also see Al-Alkim, *The United Arab Emirates Perspective on the Islands' Question, Round Table Discussion on The Dispute over the Gulf Islands*, (1993), P.29.

³¹ - See Chubin and Zabih, op. cit., P.223.

three islands. Does the strategic value of a particular territory award sovereignty over it? The British maps' recognition of Iranian sovereignty over the islands will be discussed in a later chapter.

5.3.1. *The weakness of the Iranian historical argument*

(i) The Iranian claim for the three islands is based on the claim that the whole Gulf is Persian is not substantiated by any historical or legal facts or documents. Throughout history, the Gulf has been known by different names. In olden times, it was called the 'Lower' or 'Bitter' Gulf, whereas the Ottomans called it the Gulf of Basra. The inhabitants of Hasa used to call it the Gulf of Qatif. Most probably, it was Alexander the Great who named it the Persian Gulf in 326-325 B.C.³²

However, in the first century the Roman author Pliny named the Gulf, the Arabian Gulf,³³ when he described the Charax city (it could be Al-Mohamerah).³⁴

He stated:

Charax is a city situate at the furthest extremity of the Arabian (i.e. Persian) Gulf at which begins the more prominent portion of Arabia Felix (Eudaemon): it is built on an artificial elevation, having the Tigris on the right, and the Eulaeus on the left, and lies on a piece of ground three miles in extent, just between the confluence of those streams. It was first founded by Alexander the Great. By his order it was to be called Alexandria.³⁵

³² - The Macedonian Admiral Niarcos arrived at Iraq coming from India by the Gulf. His scientific maritime trip was ordered by the Macedonian Emperor Alexander the Great to discover the source of the Euphrates River. In his trip, he followed the eastern coast of the Gulf (the Iranian Coast), whereas the western coast (the Arab Coast) remained unknown to him. According to the accounts of his trip, the Emperor called it the Persian Gulf. Since then it has been known by this name. See K. Qalachi, *Al-Khaleej Al-Arabi (Arabian Gulf)*, (1992), P.7-8.

³³ - The Iranians claim, that in the fifties, Arab nationalists were the first to call the Persian Gulf, the Arabian Gulf. See S.H. Amin, *International and Legal Problems of the Gulf*, (1981), P.36. Also Alam, op.cit., note 1, P.34.

³⁴ - A. Wilson, *The Persian Gulf*, (1954), note 4, P.30.

³⁵ - Ibid. P.49.

Also, the English historian Roderic Owen, who visited the Gulf in the twentieth century, believed it to be a Persian Gulf. However, once he knew it more he thought it fair to name it the Arabian Gulf. He said:

No English map shows the Arabian Gulf; a matter of some concern for those who live there. A traveller has to proceed as though bound for the Persian Gulf-will probably think that that's where he is when he reaches Kuwait or Bahrain, only to be told that that's where he isn't. Persian Gulf? These dry expanses of brown sand, those blue expanses of shallow water-and everything above and especially everything below-are, have been, will be, integral parts of the Arabian Gulf.

This was one of the many things I did not know before going there. It was the first Arab statement of opinion I heard and it was repeated at intervals over a year of wandering until now it is an effort to think of such a place as a Persian Gulf. Since this is an account of a journey where after the initial effort I regularly took the line of least resistance, where I purposely deprived myself of purpose, willed myself to have no will and heaped the result on to the lap of Allah, I shall refer to this burning, humid gulf of the world as 'Persian' before my arrival and as 'Arabian' after; for that is only polite.³⁶

It is known historically that the Iranians were not sailors; they have never had marine power. How, then, could they have controlled the Gulf and its islands as they claim? Those who wrote on the Gulf mentioned that the Kings of Persia failed always to be masters of the seas.³⁷ Never had they been able to control the coasts of the Gulf. Niebuhr, who visited the region in 1762, said: "Our geographers are wrong, as I have elsewhere remarked, in representing a part of Arabia as subject to the monarchs of Persia. So far is it from being so, that, on the contrary, the Arabs possess all the sea-coast of the Persian empire, from the mouths of the Euphrates, nearly to those of the Indus".³⁸

³⁶ - R. Owen, *The Golden Bubble: Arabian Gulf Documentary*, (1957), P.13.

³⁷ - Niebuhr wrote: "It is ridiculous in our geographers, to represent a part of Arabia, as subject to the Kings of Persia; when, so far from this, the Persian monarchs have never been masters of the sea-coast of their own dominions, but have patiently suffered it to remain in the possession of the Arabians", op. cit., P.8.

³⁸ - Ibid. op. cit., P.137.

Furthermore, Iranian officials have professed that they are not a people of the sea and that they are ignorant of navigation in the Gulf. As the Iranian Consul in Brussels mentioned, in one of his memoranda to the Iranian Ministry of Foreign Affairs in 1926:

It is regretted that the lack of Iranian interest in navigating in the Persian Gulf (the only free route between Iran and the world), will not prevent foreign policies in it. This lack of interest led to the foreign practice of sovereignty over it, which limited financial and political interests for foreigners And when the Iranians started establishing a naval force in the Gulf in the time of Nader Shah, they bought ships from Europe and other countries. They even started their own ship-building in Bushire But, because of the Iranians' fear of the sea, the Shah was obliged to employ navigators from India. Therefore, when the war started between Iranians and Arabs these Indians refused to confront them because they were Sunni [the official religion of Iran is Shia Islam and the official religion of Arabs countries is Sunni Islam]. So, after killing Iranian high-ranking officials, they led the ships out of the Iranian territorial waters. After this incident, no naval force has been formed in the Gulf since then until the end of war with Afghan. This war taught the Iranians the disadvantage of the lack of naval forces; now they were given the incentive once more. By the year 1865 they owned two or three ships with Indian navigators and British leadership.³⁹

It seems that Iran is building its claim for the three islands on the Gulf's being known as 'the Persian Gulf'. Therefore, they conclude that all the islands in the Gulf should be Iranian. However, such a basis is not a sound one since the name of a region does not grant sovereignty over it. Otherwise, Oman could have claimed sovereignty over all the Iranian lands located on the Gulf of Oman and, equally, India could have claimed all the lands located in the Indian Ocean.⁴⁰ The Iranian author, Professor Mirfendereski, has conceded that "claims of sovereignty over the

³⁹ - Our translation. The original text is written in the Persian language, Doc. No.97, *Kazidh Asnad Kalij Faris (Selected Documents of Persian Gulf)*, Vol.1, Islands of Persian Gulf, Institute for Political and International Studies,(1989), P.297-300.

⁴⁰ - M.H. Al-Aidarous, *al-Ilaqat al-Arabiah al-Iraniah 1921-1971 (Arab-Iranian Relations 1921-1971)*, (1985), P.23.

Tonbs based solely on Arab or Iranian/Persian ethnic considerations are inarguable at law”.⁴¹

(ii) It is a well-established historical fact that Britain did not occupy the islands of Abu Musa, Greater Tunb and Lesser Tunb by its own forces as claimed by Iran. This was stated by Sir William Luce in his negotiations in the Gulf before the Iranian occupation of the islands. He said that the British government had not seized Abu Musa from the Iranians to offer it to Sharjah.⁴² The facts were that, since the British presence in the Gulf and the conflicts with Qawasim which were followed by the treaty of 1820, the British government considered the three islands as being owned by the Qawasim. Furthermore, Britain had never practised actual control on these islands from the time it established its presence in the Gulf until the end of its protection in 1971.⁴³ It would ask permission before undertaking any action on the islands. For example, it had asked the permission of the Shaikh of Qawasim to build the lighthouse on the island of Greater Tunb.⁴⁴

It is claimed that the British prevented Iran from regaining possession of the three islands after Britain had given them to the Trucial Coast Qawasim. This is untrue. Historical accounts establish that the British intervened and actually prevented the Trucial Coast Qawasim from taking military action against Iran after the Iranian conquest of Lingah in 1887.⁴⁵ Lorimer wrote:

⁴¹ - Mirfendereski, op. cit., P.118.

⁴² - See M.A. Shokri, *Msalt al-Juzur fi al-Khaleej al-Arabi wa al-Qanun al-Dawli* (The Case of the Islands in the Arabian Gulf and International Law), (1972), P.33.

⁴³ - See J.I. Al-Rawi, *al-Juzur al-Arabiyyah al-Thalath wa-mawqif al-Qanun al-Dawli min ihtilaliha bi-al-quwah* (The three Arab Islands and the Attitude of International Law Concerning their Occupation by Force), (1981), P.20. Also T.M. Abd, *al-Ihtilal al-Askari al-Irani li-Juzur Abu Musa, Tunb al-Kubra, Tunb al-Sughra*, (Iranian Military Occupation of Abu Musa, Greater and Lesser Tunbs Islands), (1983), P.70.

⁴⁴ - See Chapter.3, P.46.

⁴⁵ - See IMBG, op. cit., Vol.7, 1920-1930, P.469.

In October 1899 the Persian Government, alarmed by a report that the expelled Shaikh of Lingah and his supporters had found an asylum in Trucial Oman, appealed to the British Government to prevent their collecting a force for the recovery of Lingah; and suitable warnings were accordingly addressed to the Trucial Shaikhs by the British authorities. Again in January 1900 the Persian Government complained that Muhammad-bin-Khalifah the ex-Shaikh of Lingah, was harboured by the Shaikh of Ras al-Khaimah; they asked that the British Government should prevent a descent by him upon Lingah, which was apprehended; and they added a mighty threat that they would take action themselves against the Shaikh of Ras al-Khaimah, a proceeding which, as was reported by the Resident, might easily result in the loss of their only vessel, the 'Persepolis'. A second warning was consequently sent to the Ras al-Khaimah chief by H.M.S. 'Melpomene'.⁴⁶

(iii) This Iranian argument was first advanced in 1887 after the Iranian government deposed the last Shaikh and took over the government of Lingah themselves, and soon afterwards they invaded Sirri island. At this time, the Qawasim of Oman were unable to withdraw from Lingah and Sirri because the British government forced them to enter into treaty relations, by which they bound themselves to observe perpetual peace and to refer all disputes to the British resident at the Gulf.⁴⁷ Therefore, the Iranian government may have believed that Abu Musa and the Tunbs islands were part of Qawasim territory as Sirri was, allocated to the Qawasim rulers of Lingah who were subject to Iran's sovereignty immediately before their expulsion from Lingah.

British historical documents prove that the sovereignty of the three islands, Abu Musa and the Greater and Lesser Tunbs, was held by the Trucial Shaikhs of Sharjah as representatives of the Qawasim Arab chiefs before and after the Iranian occupation of Lingah.⁴⁸ However, in accordance with Arab custom and because the

⁴⁶ - J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, Vol.I, Historical, Part I, (1915), P.743-4.

⁴⁷ - See IMBG, op. cit., Vol.7, 1920-2930, P.469.

⁴⁸ - Ibid. P.331.

Shaikh of Lingah was a near relative of the Shaikhs of Sharjah and Ras al-Khaimah, they consented to the ruler of Lingah exercising administration over the three islands.⁴⁹ After the extinction of the Lingah principality from the Qawasim in 1887, the administration of the three islands was transferred from Lingah to the Qawasim Coast of Oman, while Abu Musa was attached directly to Sharjah and the Tunbs islands to Ras al-Khaimah.

This administrative division was maintained when Sharjah and Ras al-Khaimah were temporarily re-united in 1900 and when they became entirely separate in 1921, with the result that Abu Musa has always belonged to the Shaikh of Sharjah, and the Greater and Lesser Tunbs to the Shaikh of Ras al-Khaimah. Therefore, although the Shaikhs of Lingah who administered the islands were at one period Iranian vassals and even Iranian officials, this fact was not at all responsible for their connection with the three islands.⁵⁰ D.W. Lascelles of the British Foreign Ministry stated in his Memorandum of 4 September 1934, "The Jowasimi owned Tamb and Abu Musa long before any of their number established themselves on Persian soil; the dominant Shaikh of the clan (and the greater part of the clan) never ceased to reside on the Trucial Coast; the rights of the Lingah Shaikhs, which were in any case derived from their family connexion and not from their position in Persia, were at all times shared with, and subordinate to, the rights of the Shaikhs on the Trucial Coast; and when the Lingah Shaikhs were finally driven from Persia, any shadow of connexion between their rights and Persia went with them. For the rest, the Jowasimi have never acknowledged Persian sovereignty over the islands, and

⁴⁹ - Ibid. Vol. 9, 1933-1935, P.277.

⁵⁰ - Ibid.

documentary evidence of their rights has been produced to the Residency Agent on the Trucial Coast".⁵¹

Since the Qawasim's control of Lingah in 1750, the Lingah part of Qawasim continued to be loyal and subordinate to the Qawasim of the coast of Oman, until the exit of the last Shaikh of Lingah in 1887. The result of these strong relations between the two parts of Qawasim, was that when the inhabitants of Lingah were harassed by Iranian officials, they chose to move to live in the coast of Oman.⁵² Niebuhr mentioned the loyalty of those Arabs who lived on the Persian coast: "But I cannot pass, in equal silence, over the more considerable colonies, which, although they are also settled without the limits of Arabia, are, however, nearer to it. I mean the Arabs upon the Southern Coast of Persia, who are commonly in alliance with, and sometimes subject to the neighbouring Schiechs. A variety of circumstances concur to indicate, that these tribes were settled along the Persian Gulf, before the conquests of the Caliphs, and have ever preserved their independence".⁵³

Also, letters between the Qawasim of Lingah and the Qawasim of Oman prove the strong loyalty of the Lingah Qawasim to the Qawasim of the coast of Oman. When Shaikh Ali bin Khalifah began governing Lingah, his letter of January 1877 to Shaikh Humaid bin Abdullah the governor of Ras al-Khaimah, gave assurances that he would execute his demand to prevent the group of Busmaith from going to the island of Tunb.⁵⁴ Another example is shown in the letter sent by Shaikh Yusuf bin Mohammed the governor of Lingah (who governed Lingah after the assassination of Shaikh Ali bin Khalifah) on 30 March 1884 to Shaikh Humaid bin Abdullah the

⁵¹ - Ibid. P.277-8.

⁵² - See Lorimer, op. cit., Vol.I, Historical, Part I, P.745.

⁵³ - Niebuhr, op. cit., P.8.

⁵⁴ - See this letter in Chapter.3, P.41.

governor of Ras al-Khaimah. In his letter he assured the loyalty and obedience of the Qawasim of Lingah to the Qawasim of the Coast of Oman. He said:

I have received your letter. Hajji Abu al-Qasim, the Residency Agent, came to me and informed me of your complaint about the island of Tunb. In reality the island belongs to you the Qawasim of Oman, and I have kept my hand over it, considering that you are agreeable to my doing so, and that our relations with you are intimate and friendly. But now when you do not wish my planting date offsets there, and the going across of the Busmaithis to cut grass there, God willing, I shall prohibit them and our mutual relations are friendly.⁵⁵

5.3.2. Strategic value of the islands does not award sovereignty

No matter who Iran is trying to prevent from controlling the Gulf, the Soviet Union in the past and the United States now, this is not a sufficient justification for it itself to occupy the three islands. At present, the United States has a strong control over the Gulf without any threat to navigation or national security. While, on the contrary, Iran was a source of insecurity for navigation in the Gulf during the Iran-Iraq war when it planted mines for ships. In addition, during the eight-years Iran-Iraq war, the Iranians used Abu Musa as a base for speed-boat attacks on shipping and oil installations.⁵⁶ However, all this is denied by Iran, who maintains that the attacks were carried out by warships of the United States Navy, during a period when Iran was the victim of a war imposed upon it by Iraq; the forces of that country subjecting its oil installations and commercial shipping to eight years of attack.⁵⁷

There is still insufficient justification for Iran to appoint itself the policeman of the Gulf, ignoring the Arab Gulf States because of their military weakness. It should be borne in mind that Iran owns many islands at the entrance to the Gulf, nearer to the Strait of Hormuz and therefore more strategic than the three islands; for

⁵⁵ - Quoted in Vinson & Elkins, op. cit., P.3.31.

⁵⁶ - The Times, 2 September 1992, P.9.

⁵⁷ - Dissenting opinion of vice-president Schwebel, *Oil Platforms* case between Islamic Republic of Iran and United States of America, ICJ Rep., 12 December (1996), P1.

example, Lark island which is 21 miles from the Strait of Hormuz and located close to the deep water channels of the Strait of Hormuz normally used by super-tankers. Also, Qeshm island which controls much of the entrance to the Strait of Hormuz. It is the biggest island in the Gulf, and is located 27 miles from the Strait. Hengam island is situated on the edge of the deep-water channels of the Strait of Hormuz, 35 miles from the Strait.⁵⁸

Furthermore, Iran signed an agreement with Oman on 25 July 1974 to delimit the continental-shelf boundary between two States from the eastern part of the Gulf through the Strait of Hormuz to the Gulf of Oman. In this agreement the security of the Strait of Hormuz was considered in determining the boundary. Prior to signing the agreement, the leaders of the two States issued a joint communiqué expressing a shared desire for agreements aimed at maintaining stability in the region and insuring freedom of passage through the Strait of Hormuz.⁵⁹ What, then, is Iran's justification for occupying the islands?

Geographic proximity is not a justification for a claim of sovereignty over a particular region. The legal study about the two Tunb islands, prepared by Vinson and Elkins for the government of Ras al-Khaimah, clarifies this point: "The geographic factor is not an independent basis for claiming sovereignty but may under certain circumstances afford some evidence of its existence. For example, where an effective display of sovereignty over some territory can be proven, the geographic factor may be relevant in assessing the extent of the territory affected by the display".⁶⁰

⁵⁸ - See Appendix B, Map 2, P.296. For more details of these islands, see Mojtahed-Zadeh, *Political Geography of the Strait of Hourmuz*, op. cit., P.11-15.

⁵⁹ - See UNTS, Vol.972, (1975), P.265. Also see J.I. Charney and L.M. Alexander, *International Maritime Boundaries*, Vol.II, (1993), P.1503-1510.

⁶⁰ - Vinson & Elkins, op cit., P.3.112.

Therefore, geographic proximity does not give permission to a state to occupy a part of another state because, geographical proximity alone does not confer sovereignty over territory.⁶¹ For example, in the *Island of Palmas* case, between the United States and the Netherlands, the United States argued for sovereignty over Palmas based on its proximity to the Philippines.⁶² The arbiter, however, rejected this argument with the following rule: “Nor is this principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty; for it is wholly lacking in precision and would in its application lead to arbitrary results”,⁶³ and in addition held that “the title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law”.⁶⁴

Similarly, in the *North Sea Continental Shelf* cases between the Federal Republic of Germany and Denmark; the Federal Republic of Germany and the Netherlands in 1969,⁶⁵ Denmark and the Netherlands, claimed that the test of appurtenance must be proximity or more accurately closer proximity: all those parts of the shelf being considered as appurtenant to a particular coastal state if they are closer to it than they are to any point on the coast of another state. However, the judgment rejected the argument of Denmark and the Netherlands that continental-shelf rights were based on ‘proximity’ to the coast, and stated:

More fundamental than the notion of proximity appears to be the principle-constantly relied upon by all the parties-of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea which is under the full sovereignty of that State. There are various ways of formulating this principle, but the underlying idea, namely of an extension of something already

⁶¹ - See R.Y. Jennings, R.Y., *The Acquisition of Territory in International Law*, (1963), P.74-6. Also see I. Scobbie, *The Spratly Islands Dispute: An Alternative View*, OGLTR, Vol.5, (1996), P.175.

⁶² - RIAA, Vol.II. P.866-7.

⁶³ - Ibid. P.855.

⁶⁴ - Ibid. P.869.

⁶⁵ - ICJ Rep., (1969), P.3.

possessed, is the same, and it is this idea of extension which is, in the Court's opinion, determinant. Submarine areas do not really appertain to the coastal State because-or not only because-they are near it. They are near it of course; but this would not suffice to confer title, any more than, according to a well-established principle of law recognized by both sides in the present case, mere proximity confers *per se* title to land territory. What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion,-in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this would follow that whenever a given submarine area does not constitute a natural-or the most natural-extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State;-or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close it.⁶⁶

The Iranian claim over the islands because of their proximity is not supported by any legally sound argument. Professor Mirfendereski concludes:

In international law, factors or considerations based on geography or location, such as contiguity, security interest, strategic value, inclusion in, or proximity to areas of national maritime jurisdiction do not confer title to an offshore island. These considerations, however, like proximity, do provide a basis for allotting an island to one state rather than another, either by agreement between the parties, or by a decision not necessarily based on law. To this extent, therefore, claims to the Tonbs based solely on such geographical factors are defeasible at law.⁶⁷

5.4. Conclusions

We conclude that the Iranian historical argument of sovereignty over the three islands is based on weak evidence. British documents showed that Iran had not practised any kind of sovereignty over the islands from 1750 until the date of their occupation. Dr. Mumtaz says "Persia had never attempted to control these islands in any materialistic way. It was satisfied to practice its control over the islands from a

⁶⁶ - Ibid. P.31.

⁶⁷ - Mirfendereski, op. cit., P.118.

distance, and in a relaxed manner. It did not establish any body on the islands to guard its rights".⁶⁸

As to the argument of the strategic value of the islands for Iran, this is political not legal. According to Jennings, a political claim has no legal validity except by agreement between the two states concerned.⁶⁹

The last point which remains to be discussed, and on which Iran builds her claims, is the map of 1886, and the question of the validity of this map as evidence for the acquisition of sovereignty over the three islands.

⁶⁸ - Mumtaz, op. cit., P.59.

⁶⁹ - See Jennings, op. cit., P.71-74.

CHAPTER SIX

Maps as Evidence of Territorial Sovereignty in International Law

6.1. Introduction

Generally maps, whenever produced as evidence, are of great importance in territorial sovereignty disputes. Therefore, each party tries to present what maps they have to prove their sovereignty over the disputed territory. However, the value of maps as evidence is left to the court dealing with the dispute. It is up to the court to decide whether to consider a certain map or not, according to the criteria of the technical qualities of the map and its source.

The purpose of this chapter is to discuss the extent of the acceptance by courts and arbitrations of maps as evidence for territorial sovereignty, since the basis of the Iranian claim for the three islands, Abu Musa and the Tunbs, is built in part on the 1886 map which was presented to the Shah in 1888 by the Intelligence Branch of the British War Office. This map shows the three islands in the same colour as the Iranian border.

Thus, I will try in this chapter to examine the definition and classification of maps. Then I will state the elements of the evidential value for maps. Finally, I will highlight the evidential value of official maps, with emphasis on the possibilities of courts' acceptance of maps as evidence of territorial sovereignty.

6.2. The definition and classification of maps in international law

Professor Hyde defined maps in international law as “a portrayal of geographical facts, and usually also of political facts, associated with them; for the cartographer commonly endeavors to reveal not only what nature has wrought, but also what

states have decreed with respect to her words”.¹ This means that the cartographer depicts also the political entity with which it is associated, not only mountains, rivers, cities and bays.²

Maps are in two classes: private and official. Private maps are prepared by a private individual or companies or non- governmental scientific societies, whereas official maps are prepared by the official surveyor or cartographer of a state or are maps annexed to delimitation treaties.³

It is generally accepted that private maps cannot be treated as official maps in terms of their probative value, and courts are definitely more cautious in admitting maps published by private persons than official maps.⁴ For example, in the *Clipperton Island* case between France and Mexico in 1931⁵, the government of the Mexican Republic to support its contention produced a geographical map obtained from the Archives of the Mexican Society of Geography and Statistics. The arbitrator stated:

the official character of this map cannot be affirmed, because it is not certain that it was drawn by order and under the care of the state, or because the manuscript memorandum which one reads there, namely, that it was used at the Royal Tribunal of the consulate of Mexico, does not confer official character upon it.⁶

¹ - C.C. Hyde, Maps as Evidence in International Boundary Disputes, AJIL, Vol.27, (1933), P.311.

² - Ibid.

³ - S. Akweenda, The Legal Significance of Maps in Boundary Questions: A Reappraisal with Particular Emphasis on Namibia, BYbIL, Vol.60, (1989), P.206. See the same writer, International Law and the Protection of Namibia's Territorial Integrity: Boundaries and Territorial Claims, Unpublished Thesis, Vol.I, (1989), P.219. Also F.A. Taha, *al-Qanwn al-Dwly wa Mnazaint al-Hdud (International Law and Boundary Disputes)*, (1983), P.135.

⁴ - Akweenda, op. cit., BYbIL, Vol.60, (1989), P.219. Also see G. Ress, The Delimitation and Demarcation of Frontiers in International Treaties and Maps, Thesaurus Acroasium, Vol.XIV, (1985), P.419.

⁵ - V.Emmanuel, Judicial Decisions Involving Questions of International Law: France-Mexico, AJIL, Vol.26, (1932), P.390.

⁶ - Ibid. P.393.

Similarly, in the *Island of Timor* arbitration between the Netherlands and Portugal in 1913, Charles Lardy, who acted as sole Arbitrator of the Permanent Court of Arbitration, stated that a private map “could not be weighed in value with the two official maps signed by the commissioners or delegates of the two states”.⁷

6.3. The criteria of probative value of maps in international law

No matter what kind of maps Iran is presenting, whether official or non-official, the fundamental criteria of cartography must be observed for any map to be considered as evidence in the territorial dispute. Professor Brownlie points out that the validity of private or official maps depends on their technical qualities; therefore, “a privately published map may have as much significance as an official map if its technical quality is high”.⁸

6.3.1. The technical qualities of maps

The technical quality of a map should be that natural and political facts are recorded in a clear and precise way, according to surveying operations. Therefore, the cartographer must combine a high degree of geographic skill with an unusual competence in deciphering political documents.⁹

Undoubtedly, at the present time, the photographs and maps of an aerial survey may register an exact portrayal of the utmost value to a commission or a tribunal burdened with the task of ascertaining the location of the boundary.¹⁰ However, most maps used as proofs in territorial disputes were made before the times of aerial survey techniques. As Professor Hyde says:

Until the beginning of the nineteenth century, cartographers lacked reliable geographical data concerning many features of the

⁷ - Ibid. Vol.9, (1915), P.240 at P.259.

⁸ - See I. Brownlie, *African Boundaries: A Legal and Diplomatic Encyclopaedia*, (1979), P.5.

⁹ - D.V. Sandifer, *Evidence Before International Tribunals*, (1975), P.372-3.

¹⁰ - See Akweenda, op. cit., BYbIL, Vol.60, (1989), P.207-8.

Western Hemisphere. As those features sometimes formed the bases on which states proceeded to act in establishing boundaries, the early map-makers not infrequently proved to be bad blunderers when they undertook to depict the territorial limits of particular countries. Ignorance of essential topographical facts occasionally led the geographers to locate mountains or rivers in fantastic positions that nature herself had avoided, or to assign to them names by which they were not commonly or locally known.¹¹

For example, in the *Palmas Island* case between the United States and Netherlands Judge Max Huber defined technical precision as the first condition to accept a map as evidence. He said: “The first condition required of maps that are to serve as evidence on points of law is their geographical accuracy”.¹²

Again in the *Taba* award between Egypt and Israel in 1988, Egypt systematically derived information concerning coordinates, elevation, and distances regarding its disputed pillar locations to the west of Wadi Taba from its 1935-38 map of the Sinai. The Tribunal did not consider these map-based indications to be conclusive “since the scale of the map (1:100,000) is too small to demonstrate a location on the ground as exactly as required in these instances where the distances between disputed pillar locations are sometimes only of a few metres”.¹³

6.3.2. *Compatibility of maps with reality and their sources*

A map, to be of probative value, must not contradict proven facts. It must not contradict official documents acquired by the court. Any information put on a map from hearsay sources and not at first hand also discredits it as evidence. Any information taken from another map of unknown source is a reason for discrediting a map. As Sandifer says: “Maps when they have no conventional or statutory

¹¹ - Hyde, op. cit., P.311-2.

¹² - RIAA, Vol.II, P.853.

¹³ - ILM, Vol.27, (1988), P.1472. Also ILR, Vol.80, (1989), P.287.

significance, should be regarded merely as representing the opinions of the persons who constructed them”.¹⁴

In the *Palmas Island* case, Judge Huber stated that: “If the Arbitrator is satisfied as to the existence of legally relevant facts which contradict the statements of cartographers whose sources of information are not known, he can attach no weight to the maps, however numerous and generally appreciated they may be”.¹⁵ Weissberg also rightly says: “Such a tendency has been particularly noticeable whenever the map describes territory of which the authors have had little knowledge, is geographically inaccurate, or is sketched in order to promote a country’s claim”.¹⁶

The best example in which the cartographic documentation had assumed ‘unaccustomed proportions’ is the *Frontier Dispute* case between Burkina Faso and Mali in 1986.¹⁷ The two disputant parties produced a considerable body of maps, sketches and drawings of the disputed frontier. The Chamber found that none of these maps was annexed, referred to or even enclosed in the administrative document which the Chamber had to interpret, therefore, it stated that it had adopted “special vigilance from the outset when examining the file of maps”.¹⁸ The law of 4 September 1947 ‘for the re-establishment of the territory of Upper Volta (Burkina Faso)’, made no reference to any map; all it contained was a reference in general terms to the boundaries ‘of the former colony ... on 5 September 1932’.¹⁹ Neither of the two disputant parties had been able to identify the map, if there was one, which

¹⁴ - See Sandifer, op. cit., P.236.

¹⁵ - RIAA, Vol.II, P.853.

¹⁶ - G. Weissberg, Maps as Evidence in International Boundary Disputes, AJIL, Vol.57, (1963), P.781.

¹⁷ - ICJ Rep., (1986), P.554. Also ILR, Vol.80, P.441.

¹⁸ - Ibid. P.584.

¹⁹ - Ibid. P.583.

was used by the French law-makers in 1947 in order to obtain a clearer picture of those boundaries.²⁰ With respect to a certain French order 2336 of 1927 and its erratum, Mali had produced a map bearing the inscription 'New frontier of Upper Volta and Niger (according to the erratum of 5 October 1927 to the order dated 31 August 1927)'; however, the Chamber stated: "that map offers no information as to which official body compiled it or which administrative authority approved the line shown on it".²¹ The official map that was annexed to letter 191 CM2 from the Governor-General of French West Africa dated 19 February 1935, was found to be missing. Finally, a French order 2728 AP of 27 November 1935 defined the boundaries of the *cercle* of Mopti 'as transcribed on the maps annexed' thereto, but here again the parties had been unable to find the maps in question. The Chamber in this case concluded that:

Not a single map available to the Chamber can reliably be said to reflect the intentions of the colonial administration expressed in the relevant texts concerning the disputed frontier. ... Thus the Chamber is confronted with an unusual situation which does not ease its burden. It has no map available to it which can provide a direct official illustration of the words contained in the four texts already mentioned, which are essential to the case, even though their authors had intended two of these texts to be accompanied by such maps.²²

Of all the maps produced by the parties, two appear to be of special overall significance, as the parties devoted much attention to them. Burkina Faso, in particular, had referred expressly to them in its submission. These were a 1:500,000 scale map of the colonies of French West Africa, 1925 edition, compiled by the Geographical Service of French West Africa at Dakar and printed in Paris by Blondel la Rougery; and the 1:200,000 scale map of West Africa, issued by the

²⁰ - Ibid.

²¹ - Ibid.

²² - Ibid. P.583-4.

French Institut Géographique National, which was originally published between 1958 and 1960. The IGN submitted a Note to the Chamber explaining the delimitation depicted on these two maps. According to that note, the 1:200,000 maps of the Mali/Burkina Faso frontier had been surveyed before the two states became independent. The note give the following explanation of how the frontiers were recorded on those maps:

Then, with the help of the texts, the cartographers tried to locate the frontier in relation to the map base. Unfortunately, the inaccuracy of the texts made it impossible to draw a sufficiently reliable boundary in certain areas. Some names quoted in the texts could not be found, others referred to villages which had disappeared or been moved, or again the actual nature of the terrain (course of rivers, position of mountains) appeared different from that described in the former itinerary surveys.

The actual frontier was, therefore, recorded in the light of information supplied by the heads of the frontier districts and according to information gathered on the spot from the village chiefs and local people.²³

From this text the Chamber drew a conclusion that the IGN which compiled the map was 'a body neutral towards the parties' to the dispute. Referring specifically to the 1:200,000 scale map, it stated that "although it does not possess the status of a legal title, is a visual portrayal both of the available texts and of information obtained on the ground".²⁴ However, it warned that observation was not sufficient to permit it to infer that the boundary depicted in successive editions of the IGN map corresponded entirely with the boundary inherited from the colonial administration. It had to consider how far the evidence offered by this or any map corroborated the other evidence produced. The Chamber ruled that it:

cannot uphold the information given by the map where it is contradicted by other trustworthy information concerning the intentions of the colonial power. However, having regard to the date on which the surveys were made and the neutrality of the source, the

²³ - Ibid. P.584-6.

²⁴ - Ibid. P.586.

Chamber considers that where all other evidence is lacking, or is not sufficient to show an exact line, the probative value of the IGN map becomes decisive.²⁵

Another example, in the *Minquiers and Ecrehos* case between France and the United Kingdom,²⁶ Judge Levi Carneiro, in his individual opinion, declined to take the evidence of maps into consideration. The issue in this case was sovereignty over a group of islets called the Minquiers and the Ecrehos. The United Kingdom cited the 1905 and 1932 editions of the map drawn by Stieler, which depicted the disputed islets as British territory. The French Agent, on the other hand, submitted several other maps during the oral arguments, some of which showed the Ecrehos as British but made no reference to the Minquiers. Other maps submitted by France omitted both groups of islets or, in some cases, showed the Ecrehos as falling outside British sovereignty. Judge Carneiro remarked that “the evidence supplied by maps ... is not always decisive in the settlement of legal questions relating to territorial sovereignty”,²⁷ but he added that maps, “may, however, constitute proof of the fact that the occupation or exercise of sovereignty was well known”.²⁸ In view of the conflicts in the maps submitted by the parties, Judge Carneiro observed that “a searching and specialized study would be required in order to decide which of the contending views in respect of maps should prevail. At any rate, maps do not constitute a sufficiently important contribution to enable a decision to be based on them”.²⁹ For these reasons, Judge Carneiro concluded that he could not take the evidence of maps into consideration.³⁰

²⁵ - Ibid.

²⁶ - ICJ Rep., (1953), P.47.

²⁷ - Ibid. P.105.

²⁸ - Ibid.

²⁹ - Ibid.

³⁰ - Ibid.

6.4. *The probative value of official maps in international law*

In my opinion, official maps may be of two kinds to be of probative value in establishing the sovereignty over a territory before a court or arbitration. The first category contains maps annexed to treaties, and the second maps published by governments.

6.4.1. *Maps annexed to territorial treaties*

Maps are often annexed to territorial treaties, in order to illustrate the course of the boundary. Therefore, a distinction must be made between maps which are annexed to treaties and stipulated to be part of these treaties on the one hand, and maps which are annexed to treaties but which are not stipulated as parts of the treaties on the other hand.

The first category of map has the same legal force as the agreement, and therefore, impose obligations on the parties.³¹ This opinion was expressly recognised in the *Frontier land* case between Belgium and Netherlands.³² Article 3 of the Convention between Belgium and Netherlands in 1843, provided:

The descriptive minute, the detailed survey maps and topographical maps, scale 1/10,000 , prepared and signed by the Commissioners, shall remain annexed to the present Convention and shall have the same force and effect as though they were inserted in their entirety.³³

Another example was in issue in the treaty determining the boundary between Ethiopia and Kenya in 1970, Article 2 of which provides:

The boundary line referred to in Article I above is also delineated on the series of thirty (30) maps (hereinafter referred to as the Boundary Commission Maps) published as Series SK 73 by the

³¹ - Taha, op. cit., P.136. Also see the same writer, *The International Legal Aspects of The Boundaries of The Sudan with Ethiopia and Kenya*, Unpublished Thesis, Vol.I, (1973), P.174.

³² - ICJ Rep., (1959), P.209.

³³ - Ibid. P.215.

Survey of Kenya in 1970 which maps shall form an integral part of the present Treaty.³⁴

In cases where maps are integral parts of treaties, the question often arises as to how the discrepancies or contradictions between the treaty and the maps is solved. In principle, there should be an article of the treaty stating how to deal with this conflict.³⁵ Some treaties state clearly that the text should prevail, for example, the Protocol defining the Boundary between French Equatorial Africa and Anglo-Egyptian Sudan in 1924, provided:

In cases where the details of the map do not appear to correspond exactly with the wording of the protocol it is the wording of the protocol which must be strictly followed.³⁶

On the other hand, other treaties state that in case of conflict between text and maps, the maps prevail. The Agreement of the Demarcation Boundary between Nigeria and Cameroon in 1913, provided in Article 21:

In case the above description of the boundary does not agree exactly with the boundary as shown on the maps accompanying the present Agreement, and which are regarded as forming an integral part thereof, it is expressly understood that the position of the boundary as shown on the maps shall decide any dispute.³⁷

If, however, the treaty is silent on the issue of how to solve any contradiction between the text and the maps, there is no general rule to decide how such a conflict should be solved.³⁸ However, some authors and judges argue that it is often the treaty rather than the map which is followed,³⁹ and they refer to Article 29 of the Peace Treaty of Versailles in 1919 as having clearly identified the boundaries of

³⁴ - Brownlie, *op. cit.*, P.792.

³⁵ - See Akweenda, *op. cit.*, BYbIL, Vol.60, (1989), P.211. Also Taha, *op. cit.*, P.138.

³⁶ - UKTS, No.28, (1924), Cmd.2221. See also Brownlie, *op. cit.*, P.636.

³⁷ - See Brownlie, *op. cit.*, P.564.

³⁸ - See *Oppenheim's*, *op. cit.*, Vol.I, (1992), P.663.

³⁹ - Separate opinion of Judge Moreno Quintana, ICJ Rep., (1962), P.70. Also D.H. Johnson, *The Case Concerning the Temple of Preah Vihear*, ICLQ, Vol.11, (1962), P.1203.

Germany on the map, namely those ‘drawn in red on a one-in-a-million map’ which was annexed to the Peace Treaty. This Article provides that: “in the case of any discrepancies between the text of the Treaty and this map or any other map which may be annexed, the text will be final”.⁴⁰

The correct position was stated by Judge Fitzmaurice in the *Temple of Preah Vihear* case between Cambodia and Thailand in 1962,⁴¹ when the Court was faced with the proposition that the map should prevail:

There is of course no general rule whatever requiring that a conflict of this kind should be resolved in favour of the map line, and there have been plenty of cases where it has not been, even though the map was one of the instruments forming part of the whole treaty settlement (as here), and not a mere published sheet or atlas page-in which case it would, in itself, have no binding character for the parties. The question is one that must always depend on the interpretation of the treaty settlement, considered as a whole, in the light of the circumstances in which it was arrived at.⁴²

It is possible to say that there is no general rule to state clearly how to settle the conflict. But, according to normal rules of interpreting treaties, the conflict between the treaty and the map should be settled by accepting the treaty rather than the map.⁴³

In the second category where maps are annexed to a treaty but do not form an integral part of it, such maps are considered of less significance. In this case, maps are simply used to clarify and illustrate the treaty and are, therefore, of less authority than the treaty. In a case of discrepancies between the treaty and a map of this kind, the map cannot override the treaty.⁴⁴

⁴⁰ - BFSP, Vol.112, (1919), P.27.

⁴¹ - ICJ Rep., (1962), P.6.

⁴² - Ibid. P.65-6.

⁴³ - Separate opinion of Judge Fitzmaurice, Ibid., P.65.

⁴⁴ - See Taha, *al-Qanwn*, op. cit., P.139.

For example, the Permanent Court of International Justice had to consider such a case in its advisory opinion concerning the Delimitation of the Polish-Czechoslovakian Frontier (*Question of Jaworzina*); here it was called upon to construe the decision of the Conference of Ambassadors of 28 July 1920, defining the boundary, to which were annexed two maps on which the boundary was marked. The Court did not regard maps of even such primary importance as decisive, but said:

It is true that the maps and their tables of explanatory signs cannot be regarded as conclusive proof, independently of the text of the treaties and decisions; but in the present case they confirm in a singularly convincing manner the conclusions drawn from the documents and from a legal analysis of them; and they are certainly not contradicted by any document.⁴⁵

It is noted that a map which is attached to a treaty, without mentioning that it is a part of the treaty, is merely for clarifying the treaty without binding any of the parties. The question is, would it be considered a legal proof if all the parties of the treaty applied it despite being in contradiction with the text of the treaty?

In cases where maps were not inseparable parts of the treaties at issue and thus not binding on the parties, they can become binding as a result of the subsequent conduct of the disputing parties. For example, in the *Temple of Preah Vihear* case between Cambodia and Thailand (1962),⁴⁶ Cambodia alleged a violation on the part of Thailand of its territorial sovereignty over the region of the Temple of Preah Vihear and its precincts. Thailand replied by affirming that the area in question was situated on the Thai side of the common boundary between the two countries, and was under its sovereignty.

⁴⁵ - PCIJ, Ser. B, No.8, P.33.

⁴⁶ - ICJ Rep., (1962), P.6.

The boundary of the area under discussion was laid down in a settlement made in the period 1904-1908, between France (the protecting Power over Cambodia until the latter's independence in 1954) and Siam (as Thailand was then called). The sovereignty over Preah Vihear depended on the Treaty of 13 February 1904, and upon events subsequent to that date.⁴⁷ However, the exact course of the boundary was, by virtue of Article 3 of this Treaty, to be delimited by a Franco-Siamese Mixed Commission. The Commission surveyed the Dangrek range of mountains, in which the Temple is situated. It prepared various maps. At that time, the Siamese Government did not possess adequate means for the preparation and publication of maps, therefore it had officially requested French topographical officers to map the region. The maps were printed and published by a well-known French cartographical firm, H. Barrere. But, before they were published, another boundary Treaty was signed on 23 March 1907. The task of delimiting the region under discussion was subsequently given to a Second Mixed Commission set up under the Treaty of 1907. Eleven maps were in due course communicated to the Siamese Government, as being those it had requested. Amongst them was one of that part of the Dangrek range in which the Temple is situated, and on it was depicted a boundary purporting to be the outcome of the work of the delimitation and showing the whole Preah Vihear promontory, including the Temple area, as being on the Cambodian side. This map was filed by Cambodia as Annex I to its Memorial.⁴⁸

Cambodia relied principally on this Annex I map in support of its claim to sovereignty over the Temple. Thailand, on the other hand, contested any claim based on the map on the grounds that the map was not the work of the Mixed Commission

⁴⁷ - Ibid. P.16.

⁴⁸ - Ibid. P.17-21.

and had, therefore, no binding character and also that at Preah Vihear the map embodied a material error.⁴⁹

The Court accepted the first contention, since the record did not show whether the map was based on any decisions or instructions given by the Commission to the surveying officers while it was still functioning. However, the Court maintained that there could be no reasonable doubt that the map was based on the work of the surveying officers in the Dangrek sector.

The Court, nevertheless, found the Siamese had received and accepted the map. Therefore, it rejected Thailand's argument as follows:

It is an established rule of law that the plea of error cannot be allowed as an element vitiating consent if the party advancing it contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error. The Court considers that the character and qualifications of the persons who saw the Annex I map on the Siamese side would alone make it difficult for Thailand to plead error in law. These persons included the members of the very Commission of Delimitation within whose competence this sector of the frontier had lain.⁵⁰

It is clear from the Temple case that acquiescence of the parties of the dispute by applying the map to the text of the treaty made it obligatory to the parties of the dispute. The question which now arises is, if the map was not annexed to the treaty between the disputing parties but was issued from an official authority, would such a map be obligatory for the other party?

6.4.2. Maps published by governments

This category of map is issued by official departments of a country for various reasons. It is usually one of a series of maps or a page in an official atlas.⁵¹ Such a map reflects a government's views of its boundaries with other neighbouring

⁴⁹ - Ibid. P.21.

⁵⁰ - Ibid. P.26.

⁵¹ - Taha, *al-Qanwn*, op. cit., P.140.

countries. An official map is produced according to the sole will of the government without coordination with other concerned parties.⁵² There is no legal rule to say that this kind of map can bind other countries which are ostensibly affected by the information stated on it.⁵³

In his appraisal of the evidentiary value of maps in international boundary disputes, Professor Hyde said that a map published by a state or under its auspices and which it was disposed to use as a means of publicly revealing its position, might be fairly accepted as establishing that, when issued, it represented what that state deemed to be the limits of its domain. He also said that when a series of official maps kept on telling the same story and substantially depicting the same limits, it might be justifiably concluded that:

they mark a frontier beyond which the interested state cannot go without some fresh and definite and respectable process of acquisition... Thus, in the course of a boundary arbitration the most obvious function of an official map issued under the auspices of a particular litigant may be that of holding that litigant in leash.⁵⁴

While MacGibbon says that tribunals do not give great importance to territorial claims based on maps, he is of the opinion that “Failure to protest against such a claim has been relied on as a recognition of its validity”.⁵⁵

In the *Rann of Kutch* case between India and Pakistan in 1968⁵⁶, India relied heavily on surveys and maps, which were published by the survey of India from 1907 onward with increasing frequency. In the words of the Counsel for Pakistan,

⁵² - M.S. Abdul Rahman, *al-Jwanb al-Qanwniah Ltswiat Nzainat al-Hdwd al-Dwaliah (The Legal Aspects of Solving International Boundary Disputes)*, (1994), P.287.

⁵³ - See Taha, *al-Qamwn*, op. cit., P.140.

⁵⁴ - Hyde, op. cit., P.315.

⁵⁵ - I.C. MacGibbon, *The Scope of Acquiescence in International Law*, BYbIL, Vol.31, (1954), P.180-1.

⁵⁶ - ILR, Vol.50, P.2.

India had based practically its 'entire case on maps'.⁵⁷ India claimed that the maps 'establish affirmatively' or they 'substantiate' or 'indicate' where the boundary was, while the surveys could 'determine' a boundary, in the sense, explained in oral argument, of 'presenting pictorially' and thereby 'defining' an existing boundary.⁵⁸ Pakistan, on the other hand, claimed that it had produced maps mainly to demonstrate that the evidence derived from the maps on which India relied was not free from error.⁵⁹ The Chairman of the Commission concluded:

They form the third and most convincing ground of India's case. These maps were published by the Survey of India from 1907 onwards with increasing frequency. In the course of time, such a coterminous boundary appears to have become a constant feature on all maps produced by that Department for the variety of purposes that maps are intended to serve. They were also widely distributed, and to the highest British authorities When, however, the true extension of sovereignty over a territory becomes the subject of investigation and inquiry, and especially of an exhaustive judicial inquiry, the evidentiary value of the maps was lessened as far as the relevant boundaries were concerned, and they were made to yield to evidence of superior weight, particularly evidence of the exercise of jurisdiction.⁶⁰

It is possible to say that a mistake in a formal map issued by the government when it is a party in the dispute is not impossible. But if the map was issued by a party unrelated to the dispute and if it is subsequently shown that there is a mistake in the map, would such a map be legal evidence to acquire the disputed territory?

6.5. The map of 1886 as evidence to allocate sovereignty over the three islands

In the sovereignty dispute between Iran and UAE, Iran claims sovereignty over the three islands Abu Musa and Tunbs on the basis of a number of official and semi-

⁵⁷ - Ibid. P.106.

⁵⁸ - Ibid. P.105.

⁵⁹ - Ibid. P.106.

⁶⁰ - Ibid. P.514-5. Also ILM, Vol.7, (1968), P.683-4.

official British maps published since 1770,⁶¹ which indicate by colour that the islands were Iranian territory. Iran's sovereignty claim to the islands is particularly based on the 'Map of Persia' which was prepared in 1886 by the Intelligence Branch of the British War Office.⁶² This is a map of Persia in six sheets, drawn to a scale of 1:16 miles, which bears the Intelligence Branch Reference No.597. Sheet 5 illustrates the eastern end of the Gulf and shows the northern (Iran) coast outlined in red. The southern (UAE) coast is not coloured. The three islands are coloured red.⁶³ A copy of this map was presented to Nasir al-Din Shah as a gift by the British Minister in Tehran during the summer of 1888 on the instruction of British Foreign Secretary Lord Salisbury.

6.5.1. *The technical qualities, reality and sources of the map of 1886*

The map was printed in 1886 when modern cartography and aerial photography were unknown. The cartographers were also ignorant of the borders between the states and disputes concerning them. Maps as old as this have often included mistakes.⁶⁴

In addition, the compatibility of the map of 1886 with reality and its sources should be questioned. First, the 1886 British War Office map was derived from an earlier map prepared in 1876 entitled 'Persia'⁶⁵ compiled by Captain O.B.C. St. John (Royal Engineers). The map was drawn to a scale of 1: 16 miles on 24 sheets and

⁶¹ - See SCOR, 26 year, 1610 the Meeting: 9 December 1971, P.18.

⁶² - See The Three Iranian Islands in the Persian Gulf, MEQ (Center for Scientific Research and Middle East Strategic Studies), Vol.1, No.2, Fall 1994. Also D.H. Bavand, *Iran's Sovereignty over the Islands of Tumb and Abu Musa*, (1994), P.58. Also R. Schofield, Borders and Territoriality in the Gulf and the Arabian Peninsula during the Twentieth Century, *Territorial Foundations of the Gulf States*, ed. R. Schofield, (1994), P.35.

⁶³ - See this map in The British Library at Shelf mark No. 50970 (41) and in the Oriental and India Office Collections at Shelf mark No. W/LPS/21/B10/106. Also see Appendix B, Map 4, P.298.

⁶⁴ - See R. Schofield, Abu Musa and the Tunbs: The historical background, *Round Table Discussion on the Dispute over the Gulf Islands*, (1993), P.50.

⁶⁵ - M.E. Bathurst & N. Ely, Sharjah's Title to the Island of Abu Musa, Unpublished, Vol.I, (1971), P.13.

published at Stanfords Geographical Establishment at Charing Cross, London. The map was neither coloured nor dated. Generally speaking, islands in the Gulf were delineated on the map, but without indicating the ownership of the three islands.⁶⁶

Secondly, the British cartographers were not familiar with the Gulf region. Therefore, their information was derived from previously published sources and maps, rather than by checking and surveying on the ground. Dr. Richard Schofield says about the British maps:

It is very difficult to know what store to put on maps, because cartographers have made mistakes on many occasions especially within the British Foreign Office. I am not saying that the maps were mistaken, but the Foreign Office has only a certain amount of resources at any one time, and its cartographers may not always have had all the facts at their disposal, especially as the local records of Britain's administration of the Gulf were then out in the Gulf.⁶⁷

Thirdly, documents and correspondence between Qawasim Lingah on the north shore and Qawasim Oman on the south shore contradict the map used by Iran, as the Qawasim Lingah recognized Qawasim Oman's ownership of the three islands.⁶⁸

6.5.2. The probative force of the map of 1886

The maps relied upon by Iran, and particularly the map of 1886, were not an integral part of any treaty between the Iranian and British governments or Trucial States (UAE) concerning sovereignty over the Gulf region.

Iran claims that it received the 1886 map from the British government as an official matter, and that Britain was representing the Trucial States or Qawasim in managing their foreign affairs at the time, but this is not correct. The date of drawing the map and the date of presenting it to the Shah in 1888 was before the

⁶⁶ - See this map in The British Library at Shelfmark No.50970 (17). Also see Appendix B, Map 5, P.299.

⁶⁷ - Schofield, Abu Musa and the Tunbs: The historical background, op. cit., P.50.

⁶⁸ - See Chapter 3, P.40-1.

signature of the treaty between the British government and Qawasim which took place in March 1892. It is only after this date that the Qawasim gave up the management of their foreign affairs to the British government.⁶⁹

Therefore, the 1886 map was produced by a state that had no relation to the region. It is worth mentioning that before and after the dates of drawing and presenting the map of 1886 to the Shah, the British government strictly and formally denounced the Iranian claim to the islands. This was formally mentioned in the report on 4 September 1934, prepared by Mr. D.W. Laselles of the British Ministry of Foreign Affairs, and sent to the British Political Resident in the Gulf; in it he summarized the attitude of the British government towards the claims by the Iranian government for sovereignty over the three islands, including relying on the map of 1886. He wrote:

its importance as an argument is largely counteracted by the fact that both before and after the date on which the map was presented the Persian claim was emphatically and officially repudiated by His Majesty's Government.⁷⁰

Accordingly, the contradiction in the information of the map of 1886 issued by the British government, and the documents issued by the same government, make the map of no legal value as evidence, since the information in the map contradicts the events of the dispute, as I mentioned earlier.

6.6. Conclusion

After the foregoing consideration and reviewing the mentioned cases, it must be concluded that tribunals are often reluctant to place much value on maps.⁷¹ In

⁶⁹ - See the text of treaty in Chapter 2, P.28.

⁷⁰ - See IMBG, Vol.9, 1933-1935, P.274.

⁷¹ - Akweenda, op. cit., BYbIL, Vol.60, (1989), P.253.

addition, international courts and countries' pleadings in different disputes consider maps with caution, and raise doubts about their probative and legal values.⁷²

Maps solely by their existence cannot constitute a title to territory. The probative force of maps can only be acquired by their incorporation into the text of a treaty or a judgment; otherwise they remain merely information, the accuracy of which varies as a function of their technical quality.⁷³ Perhaps the most extreme reservation regarding maps is contained in the *Frontier Dispute* case between Burkina Faso and Mali in 1986 when the International Court stated:

Maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps.⁷⁴

These doubts raised by courts and by states in their pleadings are caused by the ignorance of cartographers in the fields of principles of topography and territorial disputes. In addition, they rely on information from hearsay not on an original survey of the actual situation. Moreover, maps are frequently copies from other maps.⁷⁵ This results in compound errors and inaccuracies in drawing. As Akweenda says "in almost every boundary question the cartographer's source of information is a matter of primary importance".⁷⁶

In the *Temple of Preah Vihear* case Judge Moreno Quintana observed that territorial sovereignty was not a matter to be treated lightly, especially when the legitimacy of its exercise was sought to be proved by means of an unauthenticated

⁷² - Taha, *al-Qanwn*, op. cit., P.135.

⁷³ - R. Adler, Positioning and Mapping International Land Boundaries, BTB, Vol.2, No.1, ed. C. Schofield and P. Hocknell, (1995), P.29.

⁷⁴ - ICJ Rep., (1986), P.583.

⁷⁵ - See Sandifer, op. cit., P.374. Also Hyde, op. cit., AJIL, Vol.27, (1933) P.313-4.

⁷⁶ - Akweenda, op. cit., BYbIL, Vol.60, (1989), P.253.

map. Judge Quintana also said that as evidence, maps “have only a complementary value which is in itself without legal effect”.⁷⁷

In my opinion, it is wrong to base Iran’s sovereignty over the three islands according to the 1886 map or other maps for the following reasons:

(i) These maps, and the 1886 map in particular, were not agreed on according to any treaty between the two disputing parties.

(ii) The British government expressly rejected Iran’s sovereignty over the three islands before and after drawing the 1886 map.

(iii) The map was drawn by a third party which was not related to any of the disputing parties.

(iv) The existence of documents contradict the maps concerning information of ownership of the three islands.

It is possible that after the passing of a period of time since its occupation of the islands, and after taking some steps to improve or consolidate its legal position, Iran would ask for arbitration or other means of settlement of its dispute with the UAE. This will then raise the question of the critical date; is this the date of the Iranian occupation of the islands on 30 November 1971? Or the date of agreeing to submit to arbitration?

⁷⁷ - ICJ Rep., (1962), P.69-71.

CHAPTER SEVEN

The Selection of the Critical Date of a Dispute

7.1. Introduction

A court which is confronted with an international dispute relating to territorial claims needs to determine at what time the dispute must be presumed to have arisen. In the dispute between Iran and UAE over the sovereignty of the three islands Abu Musa, Greater Tunb and Lesser Tunb, the question arises as to the date when the dispute crystallized. According to this date, all conscious subsequent actions to reinforce sovereignty from both parties to the dispute are illegal or ineffective.

The aim of this chapter is to determine the critical date at which the dispute crystallized. We will define firstly the concept of critical date and its forms. Then, we will clarify the date when points of the dispute crystallized and became ready to be decided. Finally, we will look at the extent of courts' acceptance of actions subsequent to the critical date.

7.2. The concept of the critical date

The idea of critical date seems first to have been used by Judge Max Huber in the *Island of Palmas* case, between the Netherlands and the United States in 1928. The distinguished arbitrator referred to the Treaty of Paris of 10 December 1898, as the 'critical moment' in that case,¹ and went on to say: "the question arises whether sovereignty ... existed at the critical date, i.e. the moment of conclusion and coming into force of the Treaty of Paris".²

¹ - RIAA, Vol.II, P.843.

² - Ibid. P.845.

Some writers, such as Johnson, have defined the 'critical date' as "the date after which the actions of the parties cannot affect the legal situation".³ Another possible definition is given by Gerald Fitzmaurice, and is derived from the United Kingdom argument in the case of the *Minquiers and Ecrehos*; it is as follows:

The date by reference to which - or ... by reference to the legal and factual position existing at which - the merits of the Parties' claims are to be determined;

The date on which the situation is deemed to have become crystallized;

The date [after which] the acts of the Parties ... cannot alter the legal position so as either to improve or prejudice the claim of either Party;

The date ... on the basis of the position [at which], as it [then] existed ..., the respective claims of the Parties will ... have to be evaluated;

The date as at which the issue of sovereignty falls to be determined.⁴

On the other hand, some writers, such as Jennings and Brownlie, argue that it is not easy to give a clear definition of the critical date, because this takes different forms according to the circumstances.⁵ They argue that different dates of events, awards, formal announcements or treaties concerning the dispute are very often described as critical dates. For example, in the *Legal Status of Eastern Greenland* case between Norway and Denmark, the Permanent Court of International Justice had to pronounce on the validity, as against Denmark, of a Norwegian Royal Decree of 10 July 1931, in which Norway had proclaimed her sovereignty over Eastern Greenland. The Court held that the Royal Decree was, in effect, the matter 'which

³ - D.H.N. Johnson, *Acquisitive Prescription in International Law*, BYbIL, Vol.27, (1950), P.342-n.4. The same writer defined in an article written in 1954 the critical date as "the date after which the acts or omissions of the Parties cannot affect the legal situation", *The Minquiers and Ecrehos Case*, ICLQ, Vol.3, (1954), P.208.

⁴ - G. Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Vol.1, (1986), P.260 n.1. Also see the same writer, *The Law and Procedure of the International Court of Justice 1951-4: Points of Substantive Law*, BYbIL, Vol.32, (1955-6), P.20, n.2.

⁵ - I. Brownlie, *Principles of Public International Law*, (1990), P.130. Also R.Y. Jennings, *The Acquisition of Territory in International Law*, (1963), P.31.

gave rise to the ... dispute',⁶ from which statement it followed that "The date at which such Danish sovereignty must have existed in order to render the Norwegian occupation invalid is the date at which the occupation took place, viz., July 10th, 1931".⁷ The Court did not select as the critical date the period at which the dispute was born. The dispute between the two countries in all probability began as early as 1814, when the union between them came to an end. There was also ample evidence that from 1921 onwards Norway openly challenged Denmark's rights over Eastern Greenland.

In another case the court selected the date of an award or subsequent demarcation as the critical date. In the *Argentine and Chile Frontier* case (1966), the court said:

In so far as the court is asked to interpret and fulfill the Award of 1902, there is obviously a sense in which the critical date is 1902 itself-or at the latest 1903, the date of the demarcation. Neither Party is free to put forward a claim that flies in the face of the Award.⁸

A third example is the *Rann of Kutch Arbitration* case, between India and Pakistan. Although India and Pakistan did not expressly join in accepting a precise critical date, their pleadings tended to show a wide measure of agreement that certain dates were obviously 'relevant'. One such date was 13 October 1819 when the East India Company concluded the last of three treaties with the Rulers of Kutch. Both parties were in agreement that the boundary of Kutch had remained unchanged since the time when Kutch became a vassal state under the British by virtue of that Treaty. To ascertain the boundary of Sind, the date of the enactment of the India Independence Act, namely, 18 July 1947, was regarded by the parties as being relevant.⁹ As

⁶ - PCIJ, Ser. A/B, No.53, P.26.

⁷ - Ibid. P.45.

⁸ - ILR, Vol.38, P.80.

⁹ - ILM, Vol.7, (1968), P.633-656.

regards this latter date, the Tribunal itself observed that since the parties had developed their cases with primary reference to, and reliance on, evidence relating to the long period of the British rule in the Indian sub-continent, 'the time of Independence is of decisive importance'.¹⁰

These examples illustrate that international courts differ in choosing the factors determining the critical date. In an article published in 1957 Fitzmaurice gave a list of possible criteria for determining the critical date. In his view, the following are the main possibilities for the selection of the critical date:

- (i) the date of the commencement of the dispute;
- (ii) the date ... when the challenging or plaintiff state first makes a definite claim to the territory;
- (iii) the date ... when the dispute "crystallized" into a definite issue between the Parties as to territorial sovereignty;
- (iv) the date when one of the Parties ... takes active steps to initiate a procedure for the settlement of the dispute, such as negotiations, conciliation, mediation ... or other means falling short of arbitration or judicial settlement;
- (v) the date on which any of these procedures [mentioned in (iv) above] is actually resorted to and employed;
- (vi) the date on which, all else failing, the matter is proposed to be or is referred to arbitration or judicial settlement.¹¹

No matter what the form of the critical date is, what concerns us in the case of the three islands is to determine the date in which the points of dispute were crystallized and became concrete. Fitzmaurice, in the pleadings of the *Minquiers and Ecrehos* case, described the critical date as "the date on which the differences of opinion that have arisen between the Parties have crystallized into a concrete issue giving rise to a formal dispute".¹² A similar description was given by the Court of Arbitration in the *Dubai/Sharjah Border* case, "The critical date is that by reference to which the

¹⁰ - Ibid. P.666.

¹¹ - Fitzmaurice, op. cit., BYbIL, Vol.32, (1955-6), P.23-24.

¹² - ICJ Pleadings, Vol.II, (1953), P.68.

dispute can be seen to have crystallised or to have become concrete”.¹³ Hersch Lauterpacht described the critical date as “The date by reference to which a territorial dispute must be deemed to have crystallised”.¹⁴

Jennings says that if by the “critical date” is meant the date at which the points of dispute were crystallized, then it differs from the critical date which Max Huber refers to in the dispute of the *Island of Palmas*. Jennings considers the date of the treaty of cession will always be a critical date, even if this was not when the points in dispute were crystallized, and even if there was no dispute in the first place. This is because the treaty constitutes the root of title for the party which claims sovereignty under it.¹⁵

7.3. *The date on which the dispute crystallized*

The date of the crystallization of the dispute is the date on which the disputing parties stopped negotiating. It is the date when the parties adopted their final positions.¹⁶ In other words, the concept of the critical date aims to freeze the legal positions of the different parties on that date.¹⁷ It also aims to avoid any action taken by any of the parties after the date of the crystallization of the dispute in order to improve or consolidate their legal positions. This means that the legal rights of the disputing parties are to be defined according to their legal positions at the time of the critical date.¹⁸

¹³ - ILR, Vol.91, (1993), P.591.

¹⁴ - H. Lauterpacht, *The Development of International Law by the International Court*, (1958), P.242.

¹⁵ - Jennings, op. cit., P.34.

¹⁶ - See F.A. Taha, *al-Qanwn al-Dwly wa mnazaint al-Hdud*, (**International Law and Boundary Disputes**), (1982), P.127.

¹⁷ - Y.Z. Blum, *Historic Titles in International Law*, (1965), P.209.

¹⁸ - Jennings, op. cit., P.32.

In all territorial disputes, it is the tribunal's ultimate duty to define the critical date and take its final decision after hearing and looking at all the evidence produced by the parties.¹⁹ For example, in the *Taba* case between Egypt and Israel,²⁰ Egypt claimed that the critical date was established as 24 July 1922 by the reference in the Treaty of Peace to 'the recognized international boundary between Egypt and the former mandated territory of Palestine'. This was the date on which the Council of the League of Nations adopted the Mandate for Palestine.²¹ However, during negotiations Egypt agreed to consider 14 May 1948, which was the date of the termination of the British mandate-or any other date during the mandate period-as the critical date. The two parties agreed that no changes occurred to the borders during this period. The court, despite the agreement of both parties, chose 29 September 1923 the date of implementing the mandate, as the convincing critical date for this case.²²

The tribunal must ensure that the requirements of justice are observed in the choice of the critical date, because this choice affects the determination of the case; as Fitzmaurice explained in the *Minquiers and Ecrehos* case: "the conception of a critical date is intended to do justice to the real merits of each country's case, and for that reason it must not be put too early or too late".²³

The choice of a critical date which is too late could defeat the fundamental object of the critical date, namely, to prevent one of the parties from unilaterally

¹⁹ - See Fitzmaurice, *The Law and Procedure*, op. cit., P.266. Also *Oppenheim's International Law*, Vol.1-Peace, Parts 2-4, 9th edition, ed. by R. Jennings and A. Watts, (1996), P.711. Also Brownlie, op. cit., P.130. Also see M.S. Abdul Rahman, *al-Jwanb al-Qanwniah Ltswiat Nzainat al-Hdvyd al-Dwaliah (The Legal Aspects of Solving International Boundary Disputes)*, (1994), P.290.

²⁰ - ILR, Vol.80, (1989), P.226.

²¹ - Ibid. P.228.

²² - Ibid. P.284.

²³ - ICJ Pleadings, Vol.II, (1953), P.69.

improving its position by means of acts performed after the issue had been definitely joined. A party might thus reject a proposal for arbitration or other means of settlement of the dispute but, subsequently, after taking various steps to improve its position, it might then indicate its willingness to go to arbitration. Fitzmaurice argued that in this type of case it would be unfair on the other party which had always been willing to accept arbitration if the date of the eventual submission to a tribunal was to be selected as the critical date. He therefore suggested that in such a case the critical date ought to be that on which arbitration was first proposed.²⁴

On the other hand, Fitzmaurice warned that the choice of a critical date which is too early would be to place a premium on the making of paper claims which the party concerned need not follow up or insist upon: “because it would be secure in the knowledge that the mere making of the claim would operate to freeze the legal position and to shut out or nullify the value of all subsequent acts of the other party”.²⁵

7.4. The extent of the courts’ acceptance of actions subsequent to the critical date

The selection of the critical date has the result that the evidence and acts before the date of crystallization of the dispute must be taken into consideration by the court, given that they are relevant to the dispute and applicable to the evidence relating to sovereignty.²⁶ Therefore, the court should not take into consideration any subsequent acts which any of the parties had wilfully taken with the purpose of improving its legal position. On this, Fitzmaurice says:

²⁴ - Ibid. P.69.

²⁵ - Ibid.

²⁶ - See Abdul Rahman, op. cit., P.293.

One object of the critical date is to prevent one of the parties from unilaterally improving its position by means of some step taken after the issue has been definitely joined.²⁷

This is why the choice of the critical date often becomes an issue of dispute among the different parties, as every party does its utmost to choose the date which best supports its position as opposed to that of the other parties. For example, in the *Dubai/Sharjah border case*,²⁸ the government of Sharjah claimed in the beginning that the critical date should be 1955, when rulers had agreed to a delimitation of their boundaries by the British authorities, which was considered a recognition of the existence of a dispute between them. Another option, also put forward by Sharjah, was to choose 2 December 1971 as a critical date. This was the date on which the UAE came to in existence, as the UAE had as a pre-condition of its formation the existence of well-settled boundaries between the various Emirates.²⁹

The government of Dubai did not accept the claim put forward by Sharjah. It stated that in this particular case there was no significant role for the choice of a critical date. If, however, a critical date must be defined, it should be the date of the conclusion of the Arbitration Agreement on 30 November 1976,³⁰ which recognised the existence of a dispute between the Emirate of Dubai and the Emirate of Sharjah.³¹

The court did not accept 1955 as the critical date, because the actual claims of both parties in this dispute were not the same as the claims they had made in 1955. Also, it did not accept it to be 2 December 1971, when the UAE was formed,

²⁷ - ICJ Pleadings, Vol.II, (1953), P.69.

²⁸ - ILR, Vol.91, (1993), P.543. Also see D.W. Bowett, *The Dubai/Sharjah Boundary Arbitration*, BYbIL, Vol.65, (1994), P.111.

²⁹ - Ibid. P.591.

³⁰ - For more detail about the Arbitration Agreement, see Ibid. P.550.

³¹ - Ibid. P.592.

because the existence of stable and defined boundaries between the Emirates was a generally accepted pre-condition for the establishment of the Federation.³² Therefore, the court rejected the concept of the critical date in this case because found that has not played a major role in territorial disputes. However, in the view of the court, that if a critical date existed, this date could only be that of the date of signature of the Arbitration Agreement on 30 November 1976.³³

As clarified earlier, actions which are intentionally made by one of the parties after the date of crystallization of the points of the dispute to strengthen its position are not accepted by the court. Contrary to this, a tribunal may take into consideration actions which were carried out after the critical date because of the possible happening of events which point to indirect evidence and support for activities which took place before the critical date.³⁴ As Goldie said:

They do not create or perfect title; nor may they be adduced directly in proof of title, but only indirectly and to corroborate and explain the probative events occurring before the critical date.³⁵

For example, in the *Island of Palmas* case, as will be recalled, Judge Huber selected the year 1898, when the Treaty of Paris came into force, as the critical date. The visit of an American General to the island in 1906 was, on the other hand, designated by him as the origin of the dispute because it was the first contact by the Americans with the island.³⁶ In admitting evidence of events occurring between 1898 and 1906, Judge Huber said that:

the events falling between the Treaty of Paris, December 10th, 1898, and the rise of the present dispute in 1906, cannot in themselves serve to indicate the legal situation of the island at the

³² - Ibid. P.593.

³³ - Ibid. P.594.

³⁴ - See L.F.E. Goldie, *The Critical Date*, ICI.Q, Vol.12, (1963), P.1251. Also see Blum, op. cit., P.217-19. Also Taha, op. cit., P.128.

³⁵ - Goldie, op. cit., P.1254.

³⁶ - RIAA, Vol.II, P.836.

critical moment when the cession of the Philippines by Spain took place. They are however indirectly of certain interest, owing to the light they might throw on the period immediately preceding.³⁷

In the *Minquiers and Ecrehos* case, the United Kingdom argued that in the absence of any treaty or of an international instrument or act forming the clear ground of focus of the dispute, the Court had no alternative but to regard the *compromis* itself as the focal point of the dispute and, therefore, as the critical date.³⁸ However, following the precedent of the *Island of Palmas* case, the United Kingdom further argued that if the court were to select some date earlier than the date of the *compromis*, namely, 29 December 1950, as the critical date, evidence of events between that date and 29 December 1950, “cannot properly be excluded entirely and that it proves the existence of our title on the earlier date also, even if that title cannot be established by events occurring at or before that date”.³⁹

The United Kingdom maintained that the principle involved was analogous to ‘the principle of subsequent practice’: “Just as the subsequent practice of parties to a treaty, in relation to it, cannot alter the meaning of the treaty, but may yet be evidence of what that meaning is, or of what the parties had in mind in concluding it, so equally events occurring after the critical date in a dispute about territory cannot operate to alter the position as it stood at that date, but may nevertheless be evidence of, and throw light on, what that position was”.⁴⁰

France, on the other hand, argued that there was a self-evident critical date resulting from the Anglo-French Fishery Convention of 1839 pursuant to which the parties had made certain arrangements for joint fishery rights in an area that included

³⁷ - Ibid. P.866.

³⁸ - ICJ Pleadings, Vol.I, P.549-550.

³⁹ - Ibid. Vol.II, P.95.

⁴⁰ - Ibid. P.94.

the waters of the disputed islets. According to the French argument the effect of that Convention was to disqualify either party from subsequently claiming any exclusive sovereignty. Thus whichever party was sovereign in 1839, it continued to be so in 1950. Evidently the essence of the French argument was to exclude from consideration by the court events occurring in the period 1839-1950.⁴¹

In the event the Court did not expressly choose a critical date. It, however, rejected the French argument as to the critical date, for at the date when the 1839 Convention was concluded no dispute as to the sovereignty over the Minquiers and Ecrehos groups had then arisen. The parties had disagreed on the question of the exclusive right to fish oysters but they had never linked that to the question of sovereignty over the disputed islets. In such circumstances the Court found no reason “why the conclusion of that convention should have any effect on the question of allowing or ruling out evidence relating to sovereignty”.⁴²

But, on the other hand, while not expressly ruling in favour of the British argument as the critical date, the Court’s approach was generally advantageous to the British case. Thus, though it found that the dispute crystallized in the period 1886-1888 when France for the first time claimed sovereignty over the groups, it held that the acts subsequent to this period should be taken into consideration owing to the special circumstances of the case, namely that the activity in respect of the groups “had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner”.⁴³ However, the Court vindicated the fundamental object of the concept of the critical date by pointing out that subsequent acts would be inadmissible if such acts were

⁴¹ - Fitzmaurice, *The Law and Procedure*, op. cit., P.277.

⁴² - ICJ Rep., (1953), P.59.

⁴³ - Ibid. P.59-60.

deliberately performed “with a view to improving the legal position of the party concerned”.⁴⁴

Again, in the *Argentine-Chile Frontier Case*,⁴⁵ Argentina claimed that the critical date should be fixed according to the Argentina-Chile Mixed Boundary Commission in 1941 “as an event which should have an inhibitory effect upon any attempt to establish sovereignty over a disputed frontier region merely through the exercise of administrative acts”.⁴⁶ On the other hand, Chile rejected this, and claimed that the critical date should be in 1945 or at latest 1952, because “her administration over the disputed area was so well established that any Argentine activity subsequent to those dates must simply be regarded as an effort to present a new claim”.⁴⁷

The Court of Arbitration observed that the parties were not “so very far apart in their ideas as to when the critical date should be fixed”. However, after speculating on three possible critical dates, namely, the date of the Award, the date of demarcation and the date of the submission of the dispute to arbitration, it held that the notion of the critical date was of little relevance in the case and, therefore, “examined all the evidence submitted to it, irrespective of the date of the acts to which such evidence relates”.⁴⁸

It is noteworthy that though the question of the critical date did not arise in the *Temple of Preah Vihear* case, the Court seemed to have applied the principle that later acts and events were evidence of earlier states of facts. As will be recalled, the Court found that the paramount object of the settlements of the 1904-1908 period

⁴⁴ - Ibid. P.59.

⁴⁵ - ILR, Vol.38, (1969), P.10.

⁴⁶ - RIAA, Vol.XVI, P.166.

⁴⁷ - Ibid. P.166.

⁴⁸ - ILR, Vol.38, (1969), P.79-80.

was to put an end to the state of tension that then prevailed and to achieve frontier stability on the basis of certainty and finality. The Court further found that by specifically excluding frontiers from the process of revision of previous treaties which the Treaties of 1925 and 1937 would have otherwise effected, the Parties bore witness to the paramount importance they attached to finality in this field: "Their attitude in 1925 and 1937 can properly be taken as evidence that they equally desired finality in the 1904-1908 period".⁴⁹

7.5. The date of the crystallization of the dispute over the three islands

As should be evident, the determination of the critical date can exert a crucial influence on the outcome of judicial proceedings. There are only a few dates in the dispute between Iran and UAE over the three islands which can be considered as the critical date. The first is 15 September 1887 which was the date of the end of the Qawasim's rule over Lingah and the start of Iranian control over it, which led to the Iranian occupation of the island of Sirri and their claim to the island of Greater Tunb. This was based on the claim that the two islands belonged to Lingah which then fell under Iranian sovereignty.⁵⁰

However, this date cannot be considered a critical date for the dispute over the island of Greater Tunb, because there was no follow-up or persistence of the sovereignty claim to Greater Tunb by the Iranian government. After the protest made by the ruler of Sharjah on 16 October 1887 against the Iranian occupation of the island of Sirri to the British government in India, he asked them to take the necessary measures to prevent the Iranians from occupying the island of Greater

⁴⁹ - ICJ Rep., (1962), P.35.

⁵⁰ - ABPD, Vol.13, P.80.

Tunb. Since the British government did not see any move by Iran to occupy the island of Greater Tunb, it found it sufficient to protest against the Iranian occupation of the island of Sirri. The Iranian government answered that it had evidence to prove Iranian sovereignty over the island of Greater Tunb and Sirri. Accordingly, Iran presented its evidences to the British Political Resident in the Gulf. Consequently, the British Political Resident asked the ruler of Sharjah to present what he had to prove his ownership of the islands. After the study of the evidence presented by both parties, it appeared to the British Political Resident that the documents presented by the Iranian government did not prove their ownership of the islands, and that the islands belonged to the ruler of Sharjah. The Iranian government kept silent after this, and took no measures to occupy the island of Greater Tunb.⁵¹

The second date which could be chosen as the critical date is April 1904, when the Belgian employee of the Iranian Customs Department removed the flag of Qawasim from the islands of Abu Musa and Greater Tunb. He then raised the Iranian flag.⁵² It is difficult, though, to accept this as a critical date, for the Iranian government removed its flag a few days later from both islands. This resulted from a protest made by the ruler of Sharjah to the British Political Resident in the Gulf, which led to a British protest to the Iranian government concerning the actions of the Customs' employee.⁵³

Thus there is difficulty in accepting either of these dates as relevant because they did not signify the crystallization of the dispute between the two parties since negotiation between the two disputing parties did not end over the ownership of the islands.

⁵¹ - IMBG, Vol.7, 1920-1930, P.333.

⁵² - Lorimer, op cit., Vol.1, Part 1-Historical, P.745.

⁵³ - ABPD, Vol.13, P.82-3.

In this respect the Permanent Court of International Justice, in the case concerning *Mavrommatis Palestine Concessions*, had defined a dispute as “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”.⁵⁴ This definition has since been applied and clarified on a number of occasions. In the case concerning *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, in the advisory opinion of 30 March 1950 the Court, after examining the diplomatic exchanges between the States concerned, noted that “the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations” and concluded that “international disputes have arisen”.⁵⁵ Furthermore, in its Judgment of 21 December 1962 in the *South West Africa* cases, the Court made it clear that in order to prove the existence of a dispute

it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other.⁵⁶

In my opinion, in the present case, the dispute crystallized between the two disputing parties on 29 November 1971 for the island of Abu Musa, and on 30 November 1971 for the two islands of Greater and Lesser Tunb when negotiations between the two disputing parties collapsed and each party defined its final stand in the case.

⁵⁴ - PCIJ, Ser. A, No.2, P.11.

⁵⁵ - ICJ Rep., (1950), P.74.

⁵⁶ - Ibid. (1962), P.328.

*7.5.1. The date of the crystallization of the dispute over Abu
Musa island*

The date which should be considered critical in this case is 29 November 1971 as this is the date of crystallization of the dispute between the two parties. It is the date the Memorandum of Understanding was agreed between the government of Sharjah and the government of Iran. It is the date on which both parties adopted attitudes towards the island of Abu Musa and its division according to the articles of the Memorandum.

*7.5.2. The date of the crystallization of the dispute over the
Tunbs islands*

The critical date for the two islands Greater Tunb and Lesser Tunb should be the day of the Iranian occupation of the two islands on 30 November 1971, by the use of force. The Iranian government justified its occupation as the return of the islands to the Iranian territory after their occupation by British forces.⁵⁷ The government of Ras al-Khaimah condemned this act and considered it an occupation by force of its territory. It requested that the international community intervene to return the islands. Thus, this was the day on which the dispute between the two parties crystallized. Each party insisted on its right of sovereignty over these islands, and the diplomatic negotiations for solving the dispute peacefully which had preceded the occupation collapsed.⁵⁸

7.6. Conclusion

As the above-mentioned examples show, the choice of the critical date plays a significant role in any dispute, which makes every party insist on choosing a date

⁵⁷ - SCOR, 26 year, 1610 the Meeting: 9 December 1971, P.18.

⁵⁸ - The Times, 30 November 1971, P.6. Also The Glasgow Herald, 1 December 1971, P.1.

which supports its position. The definition of the date on which the dispute was crystallized is the responsibility of the court concerned. Courts do not recognize any subsequent wilful actions by a party to consolidate its legal position. Arbitrators, however, do not pay much attention to the choice of the critical date in every case. They often look at all the evidence without consideration of dates, or the dates of acts on which this evidence is based.⁵⁹

Therefore, I think that neglect by the Court of the choice of the critical date, the date when the dispute crystallized, would constitute an injustice towards one of the parties which had evidence of its sovereignty on the disputed territory prior to the critical date. As the court in *Dubai/Sharjah border* case stated: “In any event, in many judicial or arbitral decisions the role of the critical date was minimal, especially where the question was which party had sovereignty at the present time”.⁶⁰

On the other hand, this neglect encourages the other party, which had no evidence to support its claim to sovereignty before the critical date, to delay solving the dispute or taking it to the court until it imposes its complete sovereignty on the disputed territory.

To prove the UAE’s ownership of the three islands, I will clarify in the next chapter the ways in which sovereignty was exercised over the three islands by the governments of Sharjah and Ras al-Khaimah before their occupation by Iran on 30 November 1971.

⁵⁹ - See Jennings, op. cit., P.34.

⁶⁰ - ILR, Vol.91, (1993), P.546.

CHAPTER EIGHT

The UAE Exercise of Sovereignty over the Three Islands

8.1. Introduction

What is meant by a territorial dispute arising from conflicting claims of sovereignty over a particular territory? I mentioned in a previous chapter the basis on which Iran built its claim of sovereignty and occupation of the three islands Abu Musa and the Greater and Lesser Tunbs on 30 November 1971.¹ The aim of this chapter is to shed light on the acts of sovereignty that were exercised by the UAE represented in the actions of government of Sharjah over the island of Abu Musa, and the government of Ras al-Khaimah over the islands of the Greater and Lesser Tunb, until the date of the Iranian occupation of these islands. Acts of sovereignty are the proofs which are studied by any international tribunal or court in determining a dispute over a given territory.

I will first look at the kinds of acts of sovereignty which are accepted by the international courts as evidence of sovereignty over a territory. I will then look at the different kinds of sovereign acts exercised by the government of Sharjah over the island of Abu Musa and the government of Ras al-Khaimah over the islands of the Greater and Lesser Tunbs. I will also examine the inhabitants' sense of allegiance and their cooperation with the two governments. Finally, I will clarify the extent of acceptance and recognition by Iran and other countries of the sovereignty of Sharjah and Ras al-Khaimah over the islands, and the allegiance of their inhabitants to these two governments.

¹ - See Chapter 5, P.123.

8.2. *Types of material adduced as evidence of territorial sovereignty*

As mentioned earlier,² in most cases of territorial disputes the International Court of Justice and arbitral tribunals do not look at the traditional methods of the acquisition of territory, they look at the actual practice of sovereignty by each of the disputing parties and the evidence each party presents as proof. Therefore, since the case in question is an argument over a territory, each party will need to present as much evidence as possible to show the manifestation of state authority to support its argument.³

An international court or tribunal will need to strike a balance between conflicting evidence and support the most plausible. For example, in the *Minquiers and Ecrehos* case between the United Kingdom and France, the Court indicated certain acts as having special value as evidence of title: “of the manifold acts invoked by the United Kingdom Government the Court attaches, in particular, probative value to the acts which relate to the exercise of jurisdiction and local administration and to legislation”.⁴

It is difficult to examine all types of evidence presented by the different parties to a dispute because they change from one case to another. I will try, therefore, to highlight a few examples of evidence presented by some countries to prove their territorial sovereignty to the court. For example, the actual administration by the state over a territory is a manifestation of the state’s administrative authority in the territory, which can be practised in many forms. Thus, a state claiming its ownership of a territory should present a proof of its administration of the territory. It is up to the court to accept all, most or none of the proofs and, accordingly, issue a decision.

² - See Chapter 4, P.111.

³ - ICJ Rep., (1962), P.53.

⁴ - ICJ Rep., (1953), P.65.

For example, in the *Argentine and Chile Arbitration* case 1966, the Court accepted the Chilean evidence which consisted of material frequently employed for substantiating claims to territorial sovereignty, such as registration of land titles; imposition of land tax; registration of settlers with the police; registration of births, marriages and deaths; animal brand registers; imposition of military service; electoral rolls; legal transactions; police administration and judicial activity of various types; taking of censuses; provision of health and educational facilities.⁵

On the other hand, in the *Temple* case between Thailand and Cambodia, both parties adduced evidence of acts of sovereignty allegedly performed by them in the Preah Vihear area. This evidence included official visits, administrative tours, elephant hunting, road repairs, collection of taxes, medical inspection, and the upkeep of the Temple. Thailand and Cambodia also relied on what the Court described as ‘arguments of physical, historical, religious and archaeological character’. But the Court declined to regard them as ‘legally decisive’.⁶

Elaborating on this latter point, Judge Fitzmaurice said that considerations of a topographical, historical and cultural character might have some legal relevance “in a case about territorial sovereignty which turns on the weight of factual evidence that each party can adduce in support of its claim, and not on any more concrete and positive element, such as a treaty”.⁷

Another form of evidence for the practising of sovereignty by a state over a territory is its enactment of legislation and applying it to the residents in the territory. Sovereignty is also practised by practising the right of executing punishment on

⁵ - Award of Her Majesty Queen Elizabeth II for the Arbitration of a controversy between The Argentine Republic and The Republic of Chile, 1966, P.75-6. Also ILR, Vol.38, P.88.

⁶ - ICJ Rep., (1962), P.15.

⁷ - Separate Opinion, Ibid. P.53.

those who disobey the laws, whether citizens or foreigners. For example, one of the acts treated as significant by the Permanent Court of International Justice in the *Legal Status of Eastern Greenland* case was legislation. The Court pointed out that:

Legislation is one of the most obvious forms of the exercise of sovereignty power.⁸

Legislation is not considered a manifestation of sovereignty if its aim is to organize the affairs of the state's citizens in the territory. The same goes for practising the management of criminal and civil rights cases for those citizens, as it is established in international law that a state may issue legislation for its citizens who live in a territory which does not belong to the state without any influence on the legal position of this territory. The legal right of a state according to international law maybe either *ratione soli*, which is the right of the state to which the territory belongs, or *ratione personae* which is the right of the state over its citizens wherever they are.⁹ For example, in the case of *Minquiers and Ecrehos* between the UK and France, it was argued by France that the practising of criminal control by the authorities in Jersey over the citizens of the UK was according to *ratione personae* and not *ratione soli*.¹⁰ The International Court of Justice rejected this claim and ruled that the evidence presented by the UK proved that according to the law in Jersey it was a regional and not a personal element.¹¹ Thus, referring to the exercise of criminal jurisdiction by the Courts of Jersey in respect of offences committed on the Ecrehos, the Court observed that

the Courts of Jersey, in criminal cases such as these, have no jurisdiction in the matter of a criminal offence committed outside the Bailiwick of Jersey, even though the offence be committed by a

⁸ - PCIJ, Series A/B, No.53, P.48.

⁹ - F.A. Taha, *al-Qanwn al-Dwly wa Mnazaint al-Hdud (International Law and Boundary Disputes)*, (1983), P.88.

¹⁰ - ICJ Pleadings, Vol.1, P.402.

¹¹ - See the oral argument of Mr. Harrison, Counsel for the UK, Ibid. Vol.II, P.178.

British subject resident in Jersey, and that Jersey authorities took action in these cases because the Ecrehos were considered to be within the Bailiwick.¹²

The residents of the territory and the extent of their allegiance to one of the disputing parties is also evidence for proving the sovereignty of a state over the territory. This is evident in the desert, where tribal systems prevail. The sense of allegiance to the tribes and the control of one state over them proves the sovereignty of that state in the territory. For example, in the *Dubai/Sharjah border* arbitration of 1981,¹³ Dubai and Sharjah had been under the protection of Great Britain since 1892, but without clearly defined boundaries. The extent of the territory controlled by a particular Ruler depended on which tribes gave allegiance to him. In 1937, however, when the discovery of oil led companies to seek concessions from the Rulers, Great Britain took steps to define these boundaries.

As regards the land boundary, a British official, Julian Walker, surveyed the territory and, on the basis of his reports, the British Political Agent, Mr. Tripp, made a series of decisions or awards in 1956-57 establishing the land boundary, although no map accompanied these awards. The Ruler of Dubai declined to accept these awards, notwithstanding the fact that both Rulers had requested the British government in 1954 to arbitrate these boundaries.¹⁴

The continuing uncertainty over the location of the land boundary impeded good relations between the two Emirates, and two areas caused special friction. The first was the Al Mamzer peninsula, part of the coast adjacent to Dubai and separated from Sharjah town by Khan Creek. The Tripp award had placed the boundary on this peninsula some distance west of the creek, so that Sharjah claimed territory on

¹² - ICJ Rep., (1953), P.65.

¹³ - ILR, Vol.91, P.543.

¹⁴ - Ibid. P.544.

which Dubai wished to extend its harbour. The second was Hadhib Azana, an area further inland and south-west of Sharjah Town, on which Sharjah was building an industrial estate but subject to protest from Dubai.¹⁵

In the inland desert area, the line established by the Tripp decision had followed certain natural features. This was the line claimed by Sharjah. Dubai claimed a line further to the north and east.¹⁶ The nomadic tribe whose 'dirah' or homeland this area was, was the Bani Qitab, and the Sharjah government claimed that the disputed territory belonged to it as the Bani Qitab were subject to Sharjah's control and owed it allegiance. The government of Dubai, on the other hand, believed that even if there was any allegiance it was only intermittent and that the Ruler of Sharjah had no real control over the Bani Qitab. It added that on several occasions this tribe allied itself with Dubai and that action taken by Dubai in the region showed that it exercised effective control there.¹⁷

The Court, after hearing these arguments from both parties, examined the problem of allegiance and Sharjah's control over this tribe, then the question of the Bani Qitab's alliance with Dubai and the authority of the latter over the disputed territories, and finally the location of this tribe.¹⁸ The Court ruled:

In examining the frontier in the interior, the Court has noted the pre-eminent importance in this desert region peopled by nomads of the allegiance which the tribes owed to a Ruler. According to local custom, it is by way of the control of a territory by a tribe owing him allegiance that a Ruler may possess a territory.

In the present case the Court has shown that the Bani Qitab who inhabit the disputed territory owed allegiance to the Ruler of Sharjah, even if at times there were temporary interruptions of this link. The Court has also noted that the Bani Qitab was a strong tribe in control of its territory. Of course, the Bani Qitab showed a spirit of independence and the Ruler of Sharjah had many difficulties with

¹⁵ -Ibid.

¹⁶ - Ibid. P.545.

¹⁷ - Ibid. P.636.

¹⁸ - Ibid.

them, but the British authorities always recognised that the territory inhabited by the Bani Qitab was a part of Sharjah.

The Government of Dubai having invoked its alliance with the Bani Qitab the Court has indicated that such an alliance had no legal effect, the tribe not having by reason of the alliance changed its allegiance.

As for the alleged acts of control by Dubai itself, the Court has shown that such acts were done either during an alliance or that their importance was insufficient to found a claim to an effective control of the region. The Bani Qitab have not become independent and their territories must still be a part of Sharjah.

The Court has also found that since 1957 nothing has happened to modify the situation in this region or to impair the legal title of Sharjah which it possessed before this date and which was confirmed by the decision of Mr. Tripp-a decision applied by both Parties.¹⁹

Further, Munkman argues that in most territorial disputes which concern inhabited territories, the way inhabitants believe they belong to a state reflects the actual administration of the territory by that state, because in most administrative procedures the voluntary cooperation of the inhabitants is necessary.²⁰

In the case of the three islands, Abu Musa and the Greater and Lesser Tunbs, the governments of Sharjah and Ras al-Khaimah practised complete sovereignty of all kinds, administrative and legislative over these islands. In addition, the inhabitants felt allegiance to the Qawasim as the owners and rulers of these islands. Furthermore, the governments of Sharjah and Ras al-Khaimah had granted concessions to search for minerals on the islands and in their territorial waters to foreign Companies from 1898 until 1971. All this was with the knowledge of the Iranian government who kept silent about the exercise of sovereignty by the governments of Sharjah and Ras al-Khaimah, which indicates its acceptance of the Qawasims' ownership of the islands.

¹⁹ - Ibid. P.651-2.

²⁰ - A.L.W Munkman, *Adjudication and Adjustment-International Judicial Decision and the Settlement of Territorial and Boundary Disputes*, BYbIL, Vol.46, (1972-3), P.106-7.

I will, therefore, later try to present in detail some of the evidence of exercise of sovereignty by the government of Sharjah over the island of Abu Musa and the exercise of sovereignty by the government of Ras al-Khaimah over the two islands of Greater and Lesser Tunb up to the Iranian occupation of these islands on 30 November 1971.

8.3. The exercise of sovereignty by the Sharjah government over Abu Musa island

The government of Sharjah exercised all forms of sovereignty over the island of Abu Musa, such as administrative and legal authority in the person of the ruler of Sharjah or his representative on the island, or the police appointed by the government to keep law and order. This was carried out peaceably and with uninterrupted continuity. Even after the Iranian occupation of the northern part of the island, the government of Sharjah, according to the Memorandum of Understanding on 29 November 1971, exercised sovereignty over the southern part without any changes.

I will try to present, in detail, examples of the different ways by which the government of Sharjah exercised sovereignty over the island of Abu Musa. This is supported by documents which have not been used before to analyse the dispute between the UAE and Iran over the three islands.

8.3.1. Flag hoisting

The government of Sharjah raised her flag over the island of Abu Musa in 1887. This was not the date of the discovery of the island by Sharjah. As we mentioned earlier, the Qawasim's ownership of the island goes back to immemorial possession.²¹ However, the government of Sharjah raised its flag on the island of

²¹ - See Chapter 4, P.120.

Abu Musa as a sign of ownership of the island. This was done after the Iranian government expelled the Qawasim from Lingah and imposed her authority on it; and also after her occupation of the island of Sirri. Accordingly, the British Political Resident in the Gulf advised the then ruler of Sharjah to raise his flag on the island of Abu Musa, to prevent Iran from occupying the island and to prove Sharjah's sovereignty.²² The government of Sharjah raised its flag continuously on the island (with the exception of short intervals when the Iranian government took the flag away from the island),²³ until the day of the occupation of the northern part of the island by Iranian forces on 30 November 1971. Since that date, the flag of Sharjah has continued to be raised on the southern part of the island only, according to Article 2(b) in the Memorandum of Understanding.²⁴

8.3.2. Issuing passports for the residents

The residents of Abu Musa island registered at the passport office in Sharjah as residents and citizens of Sharjah. They were all granted passports as nationals of Sharjah, without any objection from the Iranian government, and have used their passports to visit Arabic countries, India, Pakistan and Iran. For example, a certain Mr. Assad Fudel Abdullah, born in the island of Abu Musa, was given passport No. 4792, issued by the ruler of Sharjah Shaikh Khalid bin Mohamed Al-Qasimi, on 15 August 1967. Because of the nature of his work as a sea captain, Mr. Assad would travel, using this passport, to all parts of Iran-such as Bandar Abbas and Shiraz-without facing any objections on the part of the Iranian government.²⁵

²² - See, IMBG, Vol.7, 1920-1930, P.334.

²³ - See Chapter 3, P.44.

²⁴ - See the text of Memorandum of Understanding in Chapter 3, P.56.

²⁵ - See Appendix A, Doc. 1, P.259.

8.3.3. *Establishing public services*

The exercise of sovereignty of the Sharjah government over Abu Musa island has been manifested by establishing public services on the island, such as a clinic, schools, a police station, and by the management and administration of all sorts of public services, including the supply of electricity and water to the island's residents.

8.3.3.1. **Schools**

In 1963, the government of Sharjah established and completed the building of the first school on Abu Musa island. At first, the school numbers were quite small-one class for boys and another for girls; thereafter, it expanded to become two separate schools. The government of the time requested help in terms of management and administration from the Kuwaiti Education Office in Dubai. In 1968, the Education Department in Sharjah took charge of managing and administering Sharjah schools, through the Kuwaiti Education Office. Amongst these schools were those in Abu Musa island.²⁶

8.3.3.2. **Public health**

At the beginning of the 1970s, Abu Musa island witnessed the establishment of a small medical clinic to offer health care to residents. The general practitioner was employed by the government of Sharjah.²⁷

8.3.3.3. **Police station**

Towards the end of the 1950s, the superintendent chief constable of Sharjah, a British subject, applied to the ruler of Sharjah for planning permission to establish a police station on Abu Musa island to maintain security and prevent crime. Planning

²⁶ - Interview on 17/11/96 with Mohamed Diyab Al-Musa, the General Manager of Sharjah Television and formerly a teacher in Sharjah schools.

²⁷ - Interview on 20/11/1996 with Mohamed Khalifah Bu-Ghanim, representative of Sharjah government in Abu Musa island.

permission was granted by the ruler of Sharjah, and the building of the small police station, in which the residents helped, was not costly. The Sharjah police force was put in charge of the station's running. Ahmed Mubarak bin Dukhan was the first chief constable at the station and has been succeeded by many others until the present day.²⁸

8.3.3.4. The supply of Electricity and Water

The ruler of Sharjah, Shaikh Khalid bin Mohamed Al-Qasimi, ordered the Finance Department in Sharjah to pay for a generator to supply Abu Musa island in 1967. This was done to satisfy the residents' needs and supply their houses with electricity, replacing the kerosene they formerly used to light their homes. The electrical engineer, Sultan bin Khadim, was in charge of installing the 100 kw Lister generator which was delivered from Sharjah to the island using a boat belonging to the Sharjah government. Diesel is still being delivered as fuel for the generator from Sharjah by sea, along with drinking water.²⁹

It is worth mentioning that the Sharjah government continued to improve and develop Abu Musa island's electricity and water supply up until the Iranian invasion began at the north of the island in 1971. Even after the invasion, in 1972, three Volvo generators of 160 kW were installed. In 1977, a Rolls Royce generator of 520 kW was installed, in addition to the others. In 1978, yet another generator of the Rolls Royce type and of 520 kW power was added. In 1982, two G.M. (General Motors) generators were installed, of 620 kW power. In 1990, a large G.M. generator of 1000 kW power was added, and in 1994, two generators of Caterpillar make and of 728 kW power were installed. Regarding water supply, two

²⁸ - Interview on 11/11/1996 with Abdullah Jumah Al-Sari, Previous Chief Constable of Sharjah.

²⁹ - Special Report on Generators on Abu Musa island by Mohamed Said Nakhan Al-Suwaidi, who is in charge of the Power Station on Abu Musa island, on 30/10/1996.

desalination units were set up in 1977; French-made, they supply 125 m³ per day. There has also been an installation of three diesel generators, French-made and of 140 kW power in the desalinating station to supplement the supply of electricity.³⁰

8.3.4. Financial subsidies of the island

The government of Sharjah provides the island of Abu Musa with public services. It also appoints civil servants to administer these services and, of course, pays them salaries. The government of Sharjah is thus exercising her sovereignty by managing the different financial affairs of the island.

8.3.4.1. Paying the salaries of employees

The government of Sharjah pays the monthly salaries of teachers in Abu Musa School and of its Janitor. It also pays the electricity board employees and members of the police forces. Since there was no bank in Abu Musa, the head teacher Mahmud Ebraheem Al-Hamarnah used to travel to Sharjah at the beginning of each month to receive all the salaries of employees on the island. The Finance Department in Sharjah used to issue the payroll and the head teacher would in turn pay each employee his or her salary.³¹

8.3.4.2. Supporting the residents financially

The government of Sharjah used to support the residents of the island financially if they needed to build, repair or improve their houses. They got the support they needed, no matter what, to improve their daily life and in addition the government

³⁰ - Ibid.

³¹ - See payroll of Abu Musa island's employees in 1968, issued by the Sharjah Finance Department. Also see Appendix A, Doc. 2, P.262.

would distribute food or clothes to the residents of the island on different occasions.³²

8.3.5. *Collecting fees and inland revenue*

The representative of the Sharjah government on Abu Musa island used to collect fees from pearling boats and those ships which delivered goods or needed water or some protection from gales etc., amongst which used to be Iranian ships, who were charged the same fees.³³ The procedure was to register the ship with the representative of the ruler and record the fees. A copy of this invoice was kept for filing with the governor's offices and another copy was issued to the customer who paid the duty. The representative had to go periodically to Sharjah to deposit the taxes, fees, and dues collected. The administration of finance regarding these charges was the rules of the Chamber of Sharjah. This continued up until the Iranian Army took over the northern part of the island.³⁴

In addition, the representative of the ruler would collect taxes from the residents of Abu Musa island. Captain Richard Courage, of H.M.S. Flamingo and the Senior Naval Officer in the Persian Gulf. in the report of his visit to the island of Abu Musa in 21 March 1951, stated:

The island is owned by the Sheikh of Sharjah, who also owns the only shop in the one small village. Taxes are collected for Sharjah by a Sheikh's representative.³⁵

³² - Interview on 20/11/1996 with Mohamed Khalifah Bu-Ghanim, representative of the Sharjah government on Abu Musa island.

³³ - FO 371/174709, Iranian buoy off Abu Musa, Special Report from F.D.W. Brown, Political Residency in Bahrain, 1 April 1964.

³⁴ - Interview on 20/11/1996 with Mohamed Khalifah Bu-Ghanim, representative of the Sharjah government on Abu Musa island.

³⁵ - See this report in IMBG, Vol.15, 1950-1951, P.595.

8.3.6. *Seeking visas (permissions) for visiting or leaving the island*

As mentioned in the previous point, the government of Sharjah exercised its sovereignty over the island of Abu Musa by imposing fees on the ships which docked at the island, or on the person profiting from its voyage. The landing of ships or persons to the island did not take place without prior permission from the Ruler of Sharjah or his representative on the island. All individuals who wished to enter the island either for visiting or for profit-making from the islands' wealth had to have acquired a permission prior to their entry. In addition, this manifestation of the sovereignty of the ruler of Sharjah was not only practised and applied in relation to foreigners but also in relation to citizens who wished to move from one island to another. In every case a permission had to be sought beforehand.

For example, on 17 August 1914, the vice-ruler of Lingah wrote a letter to Shaikh Khalid, the Ruler of Sharjah asking for permission on behalf of Rashid bin Nasir and his team, who had travelled with him from Sirri island to Abu Musa island. They wanted to transfer their goods and properties from the island of Abu Musa and wished to return back to their homeland, the island of Sirri.³⁶

8.3.7. *Stopping any acts of a foreign country over the island or territorial waters*

The government of Sharjah practised its authority over the island of Abu Musa and its territorial waters by preventing any other state from practising any kind of authority over the island. This was reflected in complaints to the British Political Resident or by effacing the acts of any foreign state done in relation to the island.

³⁶ - A.J. Al-Tadmori, *al-Juzur al-Arabiah al-Thalath (The three Arabian Islands)*, Ras al-Khaimah: Ras al-Khaimah Nationality Press, (1995), P.413.

For example, on 28 December 1864 Shaikh Sultan bin Saqar, the ruler of Ras al-Khaimah (he was also in charge of Sharjah), wrote to Colonel Pelly, Political Resident in the Gulf, to explain his order to take action against the people of Dubai when they crossed the boundaries and entered Abu Musa island to pasture their cattle. He indicated that he was most dissatisfied with their action and said: "No one went there without my permission".³⁷

Again, in April 1904, the ruler of Sharjah raised a direct objection to the lowering of his flag and the raising of the Iranian flag on Abu Musa by a Belgian employee of the Iranian Customs and Excise. He argued that this was entirely unacceptable and asked the British government to take action against this according to the 1892 treaty; this treaty was aimed at preventing any Persian intrusion.³⁸

Further, the Ruler of Sharjah asserted his sovereignty over the territorial waters of Abu Musa island when an Iranian ship laid a navigational buoy, ostensibly for Iranian shipping boats, off the Sharjah island of Abu Musa island on 22 February 1964.³⁹ Shaikh Saqar bin Sultan Al-Qasimi, the governor of Sharjah, reacted violently by rejecting this action which might interfere with the authority of Sharjah over Abu Musa island and its territorial waters. He ordered the buoy to be removed and officially declared the fact of its removal publicly on 17 April 1964.⁴⁰

³⁷ - IOR, R/15/1/246.

³⁸ - See IMBG, Vol.7, 1920-1930, P.334.

³⁹ - FO 371/174709, Iranian buoy off Abu Musa, Special Report from F.D.W. Brown Political Residency in Bahrain, 1 April 1964.

⁴⁰ - Ibid. Decree from Saqar bin Sultan Al-Qasimi, Ruler of Sharjah and Dependence, 20 April 1964. See Appendix A, Doc. 3, P.264.

8.3.8. *Signing of contracts granting concessions over the island of Abu Musa*

Normally, when a state grants a concession by a contract, it indicates that the state owns the subject of the concession. It also indicates that the beneficiary acknowledges this ownership. Otherwise, the contract would be meaningless. Therefore, the government of Sharjah exercised their sovereignty over the island of Abu Musa through the contracts which granted concessions for others to search for minerals on the island. This is evidence of their ownership of the island and in each instance, the acceptance of the other party of this ownership.

Historically, the first concession was to explore for red-oxide in the island of Abu Musa, and this began in 1898. It was the initiative of the vice-ruler of Sharjah, Shaikh Salem bin Sultan, the uncle of Shaikh Saqar bin Khalid, the Ruler of Sharjah. The concession was concluded by three people, Hassan bin Samaiyeh, a British subject who resided in Lingah, his son Abdullah bin Hassan, and another person named Isa bin Abdul Latif.⁴¹ Lingah was then under Iranian occupation but the Iranians did not object to the concession being signed.⁴²

On 1 June 1906, Hassan bin Samaiyeh signed a contract with Mr. Robert Wonckhaus, the representative of one of the German companies in Bahrain. This contract authorised the German company to buy all red-oxide products from the island of Abu Musa. The contract was for four years, and Mr. Wonckhaus had the option of extending this period if he so wished, without needing to seek the permission of either the ruler or the vice-ruler of Sharjah.⁴³

⁴¹ - See the translation of the original agreement in IMBG, Vol.6, 1903-1923, P.164.

⁴² - See Letter No. 91 from the Mayor in the Ports of Persian Gulf to the Foreign Ministry in Iran, dated 14 Shawwal 1328 H, *Kazidh Asnad Kalij Faris (Selected Documents of Persian Gulf)*, Vol.1, Islands of Persian Gulf, Institute for Political and International Studies,(1989), P.281.

⁴³ - See this contract in IMBG, Vol.6, 1903-1923, P.166.

By this Hassan bin Samaiyeh was in breach of his contract with the Ruler of Sharjah. It also meant that the Ruler of Sharjah was in breach of his treaty of 1892 with the British government. The treaty prohibited any foreign contractors from entering into any agreement or relation other than with Britain. Should the vice-ruler enter into this treaty with Germany to invest in red-oxide production, then, he would be breaching the conditions of the British treaty. Thus, the Ruler of Sharjah cancelled the new contract with the German company, which had been signed and granted by Hassan bin Samaiyeh. This resulted in the German company ceasing its activities in Abu Musa island.⁴⁴

Following this, the British company, Messrs. F.O. Strich acquired the concession for searching for red-oxide on the island of Abu Musa. The company signed a contract in 1923 with the Ruler of Sharjah, Shaikh Khalid bin Ahmed, for five years.⁴⁵

Again, on 28 January 1935, Shaikh Sultan bin Saqar, the ruler of Sharjah signed another contract to invest in red-oxide production on the island of Abu Musa. The contract was signed with Commander Robert Corbett Bayldon R.N (Retired) of Henley-on-Thames, UK, and continued up until the mid 1960s.⁴⁶

8.3.9. Administration of justice in the island

The government of Sharjah exercised jurisdiction by taking action against any crime in the province of the Abu Musa island and enforced security through the police station, or their representative before the police station was established. For example, in 1882 the ruler of Sharjah was told that his house in Abu Musa island

⁴⁴ - Ibid. P.162.

⁴⁵ - Ibid. Vol.7, 1920-1930, P.39.

⁴⁶ - See the text of agreement in Ibid. Vol.10, 1935-1937, P.135.

had been burgled, but there was no clear indication as to how much had been stolen. An investigation was carried out and foot prints were kept on file for examination. The governor sent for a specialist to examine the foot prints and appointed an investigative team to search for the offender and make a list of what had been stolen. The investigation showed that the offenders had broken into private boxes in Shaikh's house thinking that these were money-boxes. The specialist recognised the foot prints as belonging to a man from Habashah and two others from the Gulf. After further investigations, it was found that these men were followers of the ruler of Umm al-Qaiwain.⁴⁷

It is clear from this case that the governor of Sharjah practiced criminal jurisdiction over the island of Abu Musa, by his undertaking investigations once he heard about the theft, whereas the government of Iran had no role to play in this case.

8.4. The exercise of sovereignty by the Ras al-Khaimah government over the Greater and Lesser Tunb islands

Before explaining evidences presented by the government of Ras al-Khaimah to prove its practising of sovereignty over the two islands of Greater and Lesser Tunbs, it should be made clear that sometimes the three islands followed one government, sometimes the government of Sharjah. At other times it would be the government of Ras al-Khaimah that the islands followed. This is because, during those times, the two Emirates were unified under a Qasimi ruler.

In the same way that the government of Sharjah exercised sovereignty over the island of Abu Musa, the government of Ras al-Khaimah exercised sovereignty over

⁴⁷ - IOR, R/15/1/246, A letter from Haji Abu al-Kasem Residency Agents in Sharjah to the British Political Resident in the Persian Gulf, dated 24 November 1882. See Appendix A, Doc. 4, P.265.

the two islands of Greater and Lesser Tunb. This was carried out in all forms of sovereignty suitable for these two islands in an effective and continuous fashion, until their occupation by Iranian forces on 30 November 1971. Since that date, the government of Ras al-Khaimah has lost all forms of authority in the two islands. The inhabitants of Greater Tunb-the one of the two which was inhabited-deserted the island. Without inhabitants, the Iranian control over the two islands became complete. Therefore, our explanation of the exercise of sovereignty by the government of Ras al-Khaimah over the two islands will examine the period up to the date of their occupation.

8.4.1. Flag hoisting

The date of raising the flag of the government of Ras al-Khaimah over the two islands is the same as that of the date of raising the Sharjah flag over the island of Abu Musa, which was in 1887. This was undertaken for the same reason, i.e. the Iranian occupation of the island of Sirri. Since then the flag was raised continuously (with a few exceptions where the Iranian government took it away from both islands) until the date of the Iranian occupation of the two islands on 30 November 1971.⁴⁸

8.4.2. Issuing passports for the residents

As with the residents of Abu Musa island, the same passport procedure applied to the residents of the Greater Tunb. They registered at the passport office in Ras al-Khaimah as nationals and were all granted passports to use on their visits to other countries with no objection raised by the Iranian government. On 18 February 1964, for example, a certain Mohamed Hassan Abdullah, born in Greater Tunb, was given

⁴⁸ - See IMBG, Vol.7, 1920-1930, P.334. Also see Telegrams File of Greater Tunb Police Station by Ras al-Khaimah Police Headquarters, Telegram dated 12/5/1971.

passport No.5843 from the government of Ras al-Khaimah to use while working abroad. He travelled to various Arab states, including Qatar. The passport was issued as being valid for all Arab countries, India, Pakistan and Iran.⁴⁹

8.4.3. Establishing public services

The government of Ras al-Khaimah practised its full administrative sovereignty by constructing and managing public services in the island of Greater Tunb. It also offered different services to the inhabitants of the island, in proportion to the size of population, such as education, security, electricity, water, and health care. The Al-Salumi Building Company was in charge of building any public utilities in Greater Tunb island before the Iranian invasion of the island.⁵⁰

8.4.3.1. School

In Greater Tunb island, Al-Qasimiah School, a mixed school, was established as a result of planning permission issued by the governor of Ras al-Khaimah. The government of Ras al-Khaimah authorised the Qatari Education Office to manage and administer the school, since the office was in charge of managing all the schools in Ras al-Khaimah at that time in the mid-1960s. Najm Abbud A'-Isa was the first teacher and head teacher at this school. In 1968, the Education Department in Ras al-Khaimah took over through the auspices of the Qatari Education Office in Ras al-Khaimah. The Greater Tunb School was among these schools administered from the Education Department in Ras al-Khaimah.⁵¹

⁴⁹ - See Appendix A, Doc. 5, P.267.

⁵⁰ - See Telegrams File of Greater Tunb Police Station by Ras al-Khaimah Police, Telegram date 28/10/1971.

⁵¹ - Interview on 18/9/1993 with Abdul Rahman Mohamed Abu Al-Qasm, Activities chairman at the Education Office in Ras al-Khaimah, and a residents of Greater Tunb island.

8.4.3.2 Police station

The police station in Greater Tunb island was established towards the end of the 1960s, and planning permission was granted by the governor of Ras al-Khaimah Shaikh Saqar bin Mohamed Al-Qasimi. This station was administered centrally from the police headquarters in Ras al-Khaimah. The first policeman in charge of the station was Abdullah Mohamed Humaid. The mission of this station expired when the Iranian army invaded the island.⁵²

8.4.3.3. The supply of Electricity and Water

Greater Tunb island was provided with a Diesel generator by the government of Ras al-Khaimah. Again the fuel was delivered from Ras al-Khaimah and still being delivered regularly until 1971.⁵³ In addition, regular maintenance was organised through the Electricity Board in Ras al-Khaimah up until the Iranian invasion.⁵⁴

Water is available in this island and thus there was no need to deliver it from Ras al-Khaimah. However, the government of Ras al-Khaimah paid to make water available for all public buildings. For instance, the government of Ras al-Khaimah paid 500 Riyals per month in 1970 to supply Tunb police station.⁵⁵

8.4.3.4. Health services

Since there were no advances in health care in the Gulf region before the 1970s and the population was small on Greater Tunb island, a patient would be required to visit one of the Emirates in order to receive treatment. However, should many fall sick,

⁵² - Interview on 5/11/1996 with Shaikh Talib bin Saqar Al-Qasimi, Chief Constable of Ras al-Khaimah.

⁵³ - See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram from the General Manager of Electricity in Greater Tunb; Ahmed Mohamed Mahmud, dated 10/6/1970.

⁵⁴ - Ibid. Telegram dated 7-22/8/1970.

⁵⁵ - Ibid. Telegram dated 20/6/1970.

then the government's representative or the police station on the island would ask the Emirates' governor for a medical doctor to treat them.⁵⁶

8.4.4. *Financial subsidies of the islands*

In addition to the offering and managing of public services for the inhabitants of the island of Greater Tunb, the government of Ras al-Khaimah practised sovereignty by organising financial matters such as paying wages for civil servants on the island. The government of Ras al-Khaimah was responsible for paying the employees' salaries (teachers and policeman). It also paid the *Imam*,⁵⁷ who was receiving 200 Riyal per month.⁵⁸ After Iran invaded, the residents were deported and payments by Ras al-Khaimah accordingly stopped.

8.4.5. *Collecting fees and inland revenue*

The Ras al-Khaimah government clearly exercised sovereignty over the Greater Tunb island by imposing and collecting fees, taxes and inland revenue. These taxes and fees were collected from all ships entering the island's waters to trade or to fish or to dive for pearls. Taxes were evidence that the island was under the control of the government of Ras al-Khaimah. For example, Biscoe, the British Political Resident in the Gulf, in his report to convince the governor of Ras al-Khaimah to lease Tunb island to the Iranian government, indicated that if this took place, then "The Shaikh should continue to be entitled to collect from the pearling boats his customary dues".⁵⁹ The fee was one Riyal for the ship awaiting at Tunb island and

⁵⁶ - See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegrams date 22/8/1970, 3/12/1970, 18/5/1971 and 14/11/1971.

⁵⁷ - The *Imam* is the person who looks after the Mosque.

⁵⁸ - See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram date 17/7/1971.

⁵⁹ - See this report in IMBG, Vol.8, 1930-1933, P.87.

was collected by the government of Ras al-Khaimah or its representative.⁶⁰ In addition, taxes were gathered from the ships passing by the lighthouse.⁶¹

8.4.6. *Seeking visas (permissions) for visiting the islands*

The routine legal position, known to residents of the island, is that it was required by law to acquire a visa (permission: leave to stay, leave to remain) through a standard application form available from the governor's offices. Therefore, legally, any visitor who wished to visit or leave the island was expected to check-in or check-out as a standard routine. Any other procedure to enter or leave the island was considered illegal.

For example, in 1936, the British Agent in Trucial Oman wrote to Shaikh Sultan bin Salem Al-Qasimi, the ruler of Ras al-Khaimah, to seek a visa for his visit to the Greater and Lesser Tunb islands. The visit was to take place as soon as the visa was granted so that the Agent could visit the engineer Mr. Brant, who worked on Abu Musa island. The objective of the visit was to look for red-oxide.⁶²

The British Agent wrote again, on 7 February 1937, to Shaikh Sultan bin Salem to inform him of their findings and to say that Golden Valley and Co. was interested in buying the red oxide. The company sought a visa for its engineer to allow him to take samples of the red oxide in the islands of Lesser and Greater Tunb, before the full agreement could be signed.⁶³

On the same subject, the British Agent wrote a letter on 3 February 1938, to Shaikh Sultan bin Salem to inform him that the red-oxide engineer needed to visit

⁶⁰ - See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram date 12/9/1970.

⁶¹ - FO 371/13721, Letter from India Office to British Ministry of Foreign Affairs, 25 October 1929.

⁶² - Vinson & Elkins, Report on the Tunb Islands, Attorneys at Law, Unpublished, (1980), doc. no.10, P.90.

⁶³ - Ibid. Doc. No.15, P.95.

Greater Tunb for four or five days to test the metal and explain to Shaikh his findings.⁶⁴

On 9 May 1971, an Iranian boat with 100 passengers coming from Bandar Abbas and going to Dubai asked for permission to stop at Greater Tunb as all the passengers wanted to visit the island. However, the constable in charge at the police station asked them to wait for him to seek the advice of his senior officer, because all permissions had to be granted centrally through the Police and Security Headquarters in Ras al-Khaimah. The superintendent did not grant them permission, and hence the constable in charge asked them to leave the island.⁶⁵

About five months after the previous incident, three merchant ships arrived at the island in transit from Dubai to Iran. They asked for permission to land their goods on the island, but the constable in charge asked them to wait until he had telegraphed the Ras al-Khaimah Police Headquarters, which refused to grant them this permission and gave them one hour to leave the harbour.⁶⁶

The sovereignty of the ruler of Ras al-Khaimah was not only practised on and applied to foreigners but also in relation to citizens' exits for Greater Tunb; the representative of the ruler wrote on 12 January 1971;

From Yousif Mohamed Ali to Shaikh Saqar bin Mohamed Al-Qasimi, the ruler of Ras al-Khaimah, I wish to inform you that the Said Ismail Khamis, from the citizens of Tunb island wishes to seek permission to transfer to Ajman Emirate.⁶⁷

⁶⁴ - Ibid. Doc. No.16, P.96.

⁶⁵ - See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram date 9/5/1971.

⁶⁶ - Ibid. Telegram date 18/10/1971.

⁶⁷ - Our translation, the original text is written in the Arabic language. See Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram date 12/1/1971.

8.4.7. *Stopping any acts of a foreign country over the islands*

The government of Ras al-Khaimah exercised its sovereignty over Greater Tunb island by different means. It prevented any state or individual from undertaking any activity on the island without its permission. Even if a permission was granted to any individual or government, it was never unconditional. Rather was it limited and restricted to whatever the job was and this, in any case, meant no interference with the sovereignty of the Ras al-Khaimah government.

The ruler of Sharjah (he was also in charge of Ras al-Khaimah) allowed the British government to build a lighthouse to guide ships and boats when coming to Greater Tunb. Guarantees were made by the British Political Resident in the Gulf, Sir Percy Cox, to ensure that there was no interference in the island's sovereignty and he was able to assure the Sharjah ruler that the ultimate authority rested with the ruler.⁶⁸

On 16 October 1887, the ruler of Sharjah felt under threat from the Persian government, because he feared that Iran intended to invade Greater Tunb island after the occupation of Sirri island. The ruler sought protection from the British government in India, requesting British help in preventing Iran from invading Tunb, and securing its withdrawal from Sirri island.⁶⁹

In April 1904, the ruler of Sharjah condemned the lowering of the Qawasim flag from the island of Greater Tunb and the raising of the Iranian flag in its place. He asked the British government to take the necessary measures according to the treaty of 1892.⁷⁰

⁶⁸ - See Telegrams from Political Resident to Shaikh of Sharjah, 28 September 1912 and 22 October 1912 in IMBG, Vol.5, 1903-1924, P.599-600.

⁶⁹ - See IMBG, Vol.7, 1920-1930, P.333.

⁷⁰ - Ibid. P.334.

In 1949, Iranians tried again to run up their flag over the island of the Lesser Tunb, but this time the ruler of Ras al-Khaimah reacted very quickly. He immediately sent his people to pull down the Iranian flag and informed the British Resident of what had happened.⁷¹ This action was taken to uphold the sovereignty of the ruler of Ras al-Khaimah.

8.4.8. Signing of contracts granting concessions over the islands and their territorial waters

Another evidence of the government of Ras al-Khaimah's ownership of the two islands of Greater and Lesser Tunb was her exercise of sovereignty by signing contracts with foreign companies for the right to search for minerals on the islands. On 6 February 1952, the ruler of Ras al-Khaimah signed a contract with Golden Valley and Co. This contract allowed the company to extract and export red-oxide from the Tunb islands for 21 years from the date of signing the contract.⁷² The contract was sanctioned and legalised by the British Political Resident in Sharjah on 11 February 1952.⁷³ The same company had been granted permission by the ruler of Sharjah to invest in extracting and exporting the red oxide from Abu Musa island.

The exercise of sovereignty of the government of Ras al-Khaimah over the Greater and Lesser Tunb islands did not stop at the extraction and exportation of red oxide, but was expanded to include new contracts for the exploration for oil in the islands and its territorial waters.

⁷¹ - Ibid. Vol.15, 1950-1951, P.601.

⁷² - See the text of the agreement in Vinson & Elkins, op. cit., doc. no.17, P.97. Also M. Al-Mahmoud, *The Merits of Iran's Claim to the Islands of Abu Musa and Tunbs*, Unpublished Thesis, (1983), P.193.

⁷³ - A.M. Al-Sawaidi, *al-Juzur al-Arabiah al-Thalath bain al-Idaiat al-Iraniah wa al-Hqwq al-Arabiah al-Mashrwah (The Arabic islands between the Iranian claims and the legal Arabic rights)*, (1984), P.44.

In 1935 the Anglo-Iranian Oil Company, through its Abadan branch in South Iran, wished to search for oil in Ras al-Khaimah according to the Exploration Agreement of the Anglo-Iranian Oil Company Limited with the Shaikh of Ras al-Khaimah. The island of Greater Tunb was not mentioned in the survey. This resulted in the rulers of Ras al-Khaimah sending a letter to the company manager on 28 October 1935. They drew his attention to the island and asked whether he wanted to search in it.⁷⁴ On 2 November Shaikh Sultan bin Salem, the ruler of Ras al-Khaimah, repeated his note concerning the island in a letter he sent to Mr. Elkington, General Manager of Exploration Company Limited. He said:

I now wish to address you in connection with our island 'Tunb' and would like to know if the company wishes to have it surveyed, as it is not free of oil, red clay and other minerals.⁷⁵

Since the Abadan branch was not aware to whom the island belonged, Mr. Elkington sent a letter on 13 November to the head-quarters in London. He inquired whether the island was included in the territory of Ras al-Khaimah:

We are not aware of what rights, if any, the Shaikh has over 'Tunb' Island, and have asked the Political Resident to advise us on this point. We have also requested Mr. Williamson to point out to the Shaikh that our option covers all his territories.⁷⁶

In the same subject Mr. Elkington sent a copy of this letter to the Political Resident in the Gulf at Bushire.⁷⁷ On 16 November 1935 the Political Resident in the Gulf at Bushire wrote to the General Manager, the Anglo-Iranian Oil Company Limited in Abadan answering his question saying:

⁷⁴ - BP Archive, 71727 Trucial Coast, Ras al-Khaimah 26/4/1935-22/2/1936. Also see Appendix A, Doc. 6, P.269.

⁷⁵ - Ibid. Also see Appendix A, Doc. 7, P.271.

⁷⁶ - Ibid. Also see Appendix A, Doc. 9, P.274.

⁷⁷ - Ibid. Also see Appendix A, Doc. 8, P.273.

Tanb is definitely within the territories of Ras al-Khaimah and therefore falls within the company's option, vide the Shaikh's letter dated 29 Rabi II 1354, to the D'Arcy Exploration Company.⁷⁸

On the basis of the Political Resident's letter, Mr. Elkington sent a letter on 2 December 1935 to Shaikh Sultan bin Salem, the ruler of Ras al-Khaimah, confirming that the island of Tunb was included in the territories of Ras al-Khaimah and that they would be searching it if necessary:

Further to our letter No. 72-H17 dated the 13th November, we have the honour to inform you that as regards your Island of 'Tunb', we should expect to prospect there if it was deemed necessary, as being in your territory it is covered by the terms of our option.⁷⁹

On 3 March 1964, the ruler of Ras al-Khaimah, Shaikh Saqar bin Mohamed Al-Qasimi, concluded a contract for the oil exploration with two American companies: the Union Oil Exploration and Production Company and the Southern Natural Gas Company.⁸⁰ This agreement specifically included the Greater and Lesser Tunb islands within the concession area.⁸¹ The contract was also legalised by the British government, according to a political agreement on 5 March 1964 between the British government and the two American Companies.⁸²

8.4.9. *Administration of justice in the island*

Before establishing the police station in the island of Greater Tunb, the representative of the ruler of Ras al-Khaimah on the island enforced rules to keep law and order. After the establishment of the police station, it was the police's

⁷⁸ - Ibid. Also see Appendix A, Doc. 10, P.275.

⁷⁹ - Ibid. Also see Appendix A, Doc. 11, P.276.

⁸⁰ - See the text of the agreement in Vinson & Elkins, op. cit., Doc. No.23, P.108.

⁸¹ - Ibid.

⁸² - See the text of the political agreement in M.A. Shoukri, *Msalat al-Juzur fi al-Khliij al-Arabi wa al-Qanun al-Dawli* (The case of the islands in Arabian Gulf and International Law), (1972), P.97. Also T.M. Abed, *al-Ihtelal al-Askari al-Irani li Juzur Abi Musa, Tunb al-Kubra, Tunb al-Sughra* (Iranian military occupation of Abu Musa, Greater Tunb and Lesser Tunb islands), (1983), P.102.

authority to arrest outlaws, interrogate them and ask the ruler of Ras al-Khaimah for a decision on their punishment. For example, on Sunday 30 August 1970, the Greater Tunb police arrested a man called Abbas Musam, a citizen of the island; he had been found drunk and in a quarrel with other residents.⁸³ He was punished with a jail sentence according to the order of the Ras al-Khaimah Police and Security Headquarters; he was released on 11 September 1970.⁸⁴

On the same day of his release, Abbas Musam reported that his house had been burgled. The Greater Tunb police convicted Said Ali Khamis and Khalil Ebraheem of this crime.⁸⁵ They confessed, were charged and found guilty. The charge was determined by the Police Headquarters in Ras al-Khaimah.⁸⁶

At 11:30 a.m. on 30 December 1970, Greater Tunb police reported that Mohamed Ali Mohamed from the island of Greater Tunb had shot his wife accidentally when he was cleaning his pistol.⁸⁷ His wife had been shot through an eye and the bullet had exited behind her ear. Tunb police investigated and kept the man and his weapon in custody.⁸⁸ The woman was taken to the emergency services and, since there was no treatment for such cases on the island, she was transferred to Ras al-Khaimah to be treated.⁸⁹ The results of all investigations showed that it was an accident and that the husband had not intended to harm his wife. Furthermore, since the wife and her family dropped the charges, the man was released on 2 November 1971 by the Tunb police.⁹⁰

⁸³ - Telegrams File of Greater Tunb Police Station at Ras al-Khaimah Police Headquarters, Telegram date 31/8/1970.

⁸⁴ - Ibid. Telegram date 11/9/1970.

⁸⁵ - See the bulletin which was submitted by the Said Abbas Musam, dated 11/9/1970, Ibid.

⁸⁶ - See the confession of defendants to thieving, dated 11/9/1970, Ibid.

⁸⁷ - See the bulletin dated 30/12/1970, regarding the woman's injuries, Ibid.

⁸⁸ - See the interrogation and the investigation of Mohamed Ali Mohamed on 30/12/1970, Ibid.

⁸⁹ - See the telegram regarding the treatment of the woman on 30/12/1970, Ibid.

⁹⁰ - See the telegram which states the release of the husband on 2/1/1971, Ibid.

Other evidence to show that security, law and order rested with the governor of Ras al-Khaimah is that in Greater Tunb, at 7:30 a.m. on 5 July 1971, Greater Tunb police station reported to Ras al-Khaimah Police Headquarters that a man called Ahmed Mohamed Mahmud, a resident of the island, was in breach of the peace and had conspired against the representative of the governor and the police forces.⁹¹ On the same day, the Police Headquarters in Ras al-Khaimah sent a telegram to Greater Tunb police station to arrest the man and this order was signed by Shaikh Saqar bin Mohamed Al-Qasimi, the governor of Ras al-Khaimah. The order asked Greater Tunb police to bring the said man to Ras al-Khaimah as soon as possible in order to sign the order of his punishment and enforce law and order.⁹²

This discussion of the exercise of different forms of sovereignty by the government of Ras al-Khaimah over the two islands of Greater and Lesser Tunb shows that the exercise of sovereignty by the government of Ras al-Khaimah over the island of Lesser Tunb was very limited. This, however, does not reduce the sovereignty rights of the government of Ras al-Khaimah over this island. First, the island is not inhabited. The requirements of international law are very limited for the practising of sovereignty over remote or uninhabited territories. Secondly, the island of Lesser Tunb is related to the island of Greater Tunb. Both islands should be considered together as a group. Sovereignty does not have to be manifest on every point of territory. Related islands form a special case, in which the practising of sovereignty over one island in a group of islands extends to the other islands in the same group.⁹³ This is what Judge Huber stated in the case of the *Island of Palmas*:

⁹¹ - See the Memorandum, which was sent to Greater Tunb Police regarding Ahmed Mohamed Mahmud on 5/7/1971, Ibid.

⁹² - See the order and the warrant to arrest Ahmed Mohamed Mahmud on 5/7/1971, Ibid.

⁹³ - See D.W. Bowett, *The Legal Regime of Islands in International Law*, (1979), P.45.

As regards to groups of islands, it is possible that a group may under certain circumstances be regarded as in law a unit, and that the fate of the principal part may involve the rest. Here, however, we must distinguish between, on the one hand, the act of first taking possession, which can hardly extend to every portion of territory, and, on the other hand, the display of sovereignty as a continuous and prolonged manifestation which must make itself felt through the whole territory.⁹⁴

Therefore, the government of Ras al-Khaimah had practised different forms of sovereignty over the two islands, as a unit, in a continuous and peaceful fashion until the day of the Iranian occupation.

After displaying the different forms of exercising sovereignty by the governments of Sharjah and Ras al-Khaimah over the three islands, the question is, to what extent was the allegiance, acceptance and cooperation of the inhabitants of the islands with the two governments in the administration of the islands actual and peaceful?

8.5. Allegiance of the inhabitants' of the islands to the Sharjah and Ras al-Khaimah governments

Among evidence of the sovereignty of a state over the territory is the extent of the feeling of allegiance on the part of the inhabitants, their compliance with the rules, and their cooperation with the government. In the case of the three islands, we stated in the definition of the dispute between Iran and the UAE, that the inhabitants of the islands of Abu Musa and Greater Tunb are a branch of the Arab tribes which inhabit the two Emirates of Sharjah and Ras al-Khaimah, such as the tribes of Sudan, Hurez and Tamim.⁹⁵ These tribes are allies with the tribe of Qawasim, they accept its rule and they feel they belong to it. If the original tribes accept the rule of the Qawasim

⁹⁴ - RIAA, Vol.II, P.845.

⁹⁵ - See Chapter 3, P.34,36.

and consider themselves their allies, then the branches of these tribes follow the original tribes in accepting and allying themselves with the Qawasim.

Another point is that by the time of the establishment of the passport system for travelling in the two Emirates of Sharjah and Ras al-Khaimah, the inhabitants of the islands of Abu Musa and Greater Tunb-as mentioned earlier-registered their names at the department of passports as citizens of these Emirates and also applied to acquire passports when they needed these to travel abroad.⁹⁶ This is a demonstration of their feeling of allegiance to the two Emirates, otherwise they would have gone to the Iranian government to apply for passports.

We also notice the insistence of the inhabitants of the two islands, Abu Musa and Greater Tunb, to belong to the Qawasim before as well as after the Iranian occupation of the islands, as the Honourable Lt. Col. H.V. Biscoe, Political Resident in the Gulf mentioned in his report on 6 January 1931 to the Foreign Secretary of the British Government of India. The way in which the ruler of Ras al-Khaimah was convinced to lease the Tunb island to the Iranian government at that time is also important: if the ruler agreed to the lease, then “that the inhabitants of the island would remain subjects of the Shaikh of Ras al-Khaimah and that no kind of pressure would be brought on them to become Persian subjects”.⁹⁷

Even after the Iranian occupation of the islands, the inhabitants insisted on allegiance to Sharjah as they have lived in the southern part of the island of Abu Musa until the present. The inhabitants of the island of Greater Tunb refused the

⁹⁶ - See Appendix A, Doc. 12, P.277.

⁹⁷ - See this report in IMBG, Vol.8, 1930-1933, P.87.

Iranian offer to receive Iranian nationality and all related rights if they stayed on the island. They insisted on refusing the offer and left for Ras al-Khaimah.⁹⁸

Another aspect of the feeling of allegiance to the governments of Sharjah and Ras al-Khaimah, is the degree and extent of cooperation of the inhabitants of the islands of Abu Musa and Greater Tunb with the ruler, his representative or the police. For example, it was the inhabitants of the island of Abu Musa who helped the government to build the police station in the 1950s. On the other hand, there was no cooperation with the Iranian forces on the day of occupation. The inhabitants of Greater Tunb refused to cooperate and stay under Iranian rule, and they left the island. The inhabitants of the island of Abu Musa who stayed in the southern part of the island, according to the Memorandum of Understanding, stayed in isolation from the Iranian forces which were stationed in the northern part. This is a strong indication that the inhabitants of the islands of Abu Musa and Greater Tunb refuse to belong to Iran, refuse the rule of the Iranian government, and insist on belonging to the Emirates of Sharjah and Ras al-Khaimah and being governed by their governments as the owners and rulers of the islands until the present. This is supported by the fact that some Arab and non-Arab countries used to, and still do recognize the allegiance of the inhabitants of the islands to the governments of Sharjah and Ras al-Khaimah.

8.6. The third-party recognition of the Sharjah and Ras al-Khaimah governments' sovereignty over the three islands

The acceptance and recognition by other states that the three islands are owned by the governments of Sharjah and Ras al-Khaimah and that the inhabitants belong to

⁹⁸ - Interview on 18 September 1993 with Mohamed A. Abu Al-Qasm and his son Abdul Rahman, from Great Tunb island.

those two Emirates means the recognition of the sovereignty of these two governments over the three islands. As explained earlier in the definition of the dispute over the islands, since the arrival of the British in the Gulf region and the imposition of their control on the area, they recognized that the ownership of the three islands, Abu Musa, Greater and Lesser Tunb, belong to the tribe of the Qawasim who used to, and still do, govern the two Emirates of Sharjah and Ras al-Khaimah. There is nothing to indicate that Iran had sovereignty over these islands before the British presence.⁹⁹ British recognition the ownership of Qawasim of the three islands was continuous until it left the region in 1971.

Arab and non-Arab countries recognized that the inhabitants of the island of Greater Tunb belonged to the government of Ras al-Khaimah, before and after the Iranian occupation of the island on 30 November 1971. Kuwait and the Kingdom of Saudi Arabia, for example, permitted entry for the purpose of visiting to Mohamed Ali Mohamed, who was born in Tunb island and carried passport No. B1897 issued in Ras al-Khaimah on 14 July 1965.¹⁰⁰ This indicates the formal recognition by the two countries that the passport-holder's was a national of the government of Ras al-Khaimah.

Another example, from a non-Arab country, is the issue of two visiting visas by the government of India in 1967, the first was to Mohamed Mahmoud, born on Tunb island and carrying passport No. B4792 issued in Ras al-Khaimah on 22 February 1967,¹⁰¹ and the other visa was issued to Mohamed Ali, born on Tunb island and carrying passport No. B4794 issued in Ras al-Khaimah 22 February 1967.¹⁰² These

⁹⁹ - See Chapter 3, P.63.

¹⁰⁰ - See Appendix A, Doc. 13, P.279.

¹⁰¹ - See Appendix A, Doc. 14, P.281.

¹⁰² - See Appendix A, Doc. 15, P.283.

two men, because of the nature of their work as sailors, had travelled to India every year using the same passports issued from Ras al-Khaimah since the date of the first visa issued to them until 1972. This implies the formal recognition of the Indian government that the above-mentioned men born in Greater Tunb were nationals of Ras al-Khaimah, before and after the Iranian occupation of the island.

The recognition of the sovereignty of the governments of Sharjah and Ras al-Khaimah over the three islands and the consequent nationality of the inhabitants of the islands was not limited to some Arab and non-Arab countries, but also extended to include the Iranian government itself on many occasions. This was expressed either by the acquiescence of the sovereignty of the governments of Sharjah and Ras al-Khaimah or by the acceptance that the inhabitants were nationals of the two governments.

8.7. Iran acquiesces and recognizes the sovereignty of Sharjah and Ras al-Khaimah governments over the three islands

As argued earlier, acquiescence is when a state takes a negative stand in the face of the violation of its rights from another state. This is implied in the silence and the lack of protest in a case which should initiate a reaction to express the protest of a state towards the actions of another state. Otherwise, silence and lack of protests indicate acceptance and acquiescence of the actions of the other state.¹⁰³

In the case of the three islands, Abu Musa and the Greater and Lesser Tunbs, we can see from the history of the dispute and the forms of exercising sovereignty by the governments of Sharjah and Ras al-Khaimah over these islands, that the Iranian government, or bodies representing the Iranian government, kept silent in many cases towards the actions of the two governments regarding the islands. Moreover,

¹⁰³ - See Chapter 4, P.89.

in some cases the Iranian government entered into negotiations to rent the island of Greater Tunb from the government of Ras al-Khaimah, which indicates its acceptance and recognition of the sovereignty of the governments of Sharjah and Ras al-Khaimah over the three islands.

8.7.1. The acceptance of the Iranian government to leasing of the island of Greater Tunb

We noted in the historic background of the dispute over the three islands that in 1930 negotiations took place between Sir Robert Clive, the British Ambassador in Tehran and Teymourtache, the Iranian Minister of Court at the time, on how to solve the dispute over the islands. The Iranian Minister of Court suggested to the British Ambassador, amongst the solutions that the Iranian government would be willing to accept, was the leasing of the island of Greater Tunb from the ruler of Ras al-Khaimah. He also said that the Iranian side was ready to pay the lease as long as it was a long-term one. As mentioned earlier, the ruler of Ras al-Khaimah put forward conditions which were not accepted by the Iranian government and the contract was not signed.¹⁰⁴ These negotiations to lease Greater Tunb indicates the recognition of the Iranian government of the ownership and sovereignty of the island of Greater Tunb by the government of Ras al-Khaimah. Otherwise, the Iranian Minister of Court would not have suggested to the British Ambassador in Tehran a lease of the island.

8.7.2. The recognition of the Iranian government that the inhabitants of the island of Abu Musa were nationals of the government of Sharjah

We have mentioned that Assad Afudel Abdullah used to travel for business to Bandar Abbas and Shiraz frequently from August 1967 to September 1971. During

¹⁰⁴ - See Chapter 3, 49.

that time he was never refusal entry into Iran even although he travelled on a passport issued from the government of Sharjah, nor was there any objection based on the fact that he was born on the island of Abu Musa.¹⁰⁵ The same goes for Salem Obaid Salem who was born in Abu Musa island and carried passport No. 14519 issued by the government of Sharjah on 6 August 1971. He travelled to Iran on 25 August 1971 with no objection on the part of the Iranian authorities.¹⁰⁶

Moreover, the Iranian authorities formally recognized that the inhabitants of the island of Abu Musa were nationals of a foreign state and not Iran. The proof of this is that the Iranian government registers all electronic equipment carried by a foreigner on his passport. This system is applied in Iran to all foreigners. The idea is that whoever enters Iran with any electronic equipment must leave Iran with the equipment and the record will be checked on the passport. Nevertheless, Iranian citizens are treated differently, and are required to pay Customs and Excise duty upon entry. Thereupon, on 25 August 1971, Salem Obaid Salem travelled to Iran, carrying a transistor radio in his luggage. When he reached Bandar Abbas, the Customs and Excise in Bandar Abbas recorded the radio specifications and estimated its value in his passport. On 8 September 1971, when he decided to leave Iran through Kanarek (a seaport near Blujestan), they recorded in his passport that he had left with the radio that had been recorded on his entry.¹⁰⁷

This formal action indicates the recognition that the inhabitants of the island of Abu Musa were nationals of Sharjah and not the Iranian government.

¹⁰⁵ - See Appendix A, Doc. 1, P.259.

¹⁰⁶ - See Appendix A, Doc. 16, P.286.

¹⁰⁷ - Ibid. P.287.

*8.7.3. The recognition by Iranian formal bodies that the three islands
are not under Iranian sovereignty*

The fact that the Iranian authorities did not assert their sovereignty over the three islands is evidence of their recognition and acquiescence that these islands are under the sovereignty of another state. For example, on 19 September 1954, the islands in the Gulf under Iranian sovereignty were defined so that oil could be searched for in them by the Anglo-Iranian Oil Company and they could be named in Schedule I of the agreement between Iran, the Iranian National Oil Company and the Consortium members. A letter from the Anglo-Iranian Oil Company Ltd. to the Ministry of Finance stated:

In view of the expressed desire of the Government of Iran to improve, as far as possible, the economic status of the islands in the Persian Gulf under Iranian sovereignty, and named in Schedule I of the Agreement between Iran, NIOC and the Consortium members, the Consortium members undertake to

- (a) Either commence exploration work for oil or gas on at least one island in each of the three groups designated below within seven years of the Effective Date, or exclude and release from the Area of the Agreement any such group of islands in which exploration work has not so commenced.
- (b) Either discover oil or gas on at least one island in each of such groups within fifteen years of the Effective Date, or exclude and release from the Area of the Agreement any such group in which oil or gas has not been so discovered.
- (c) Either produce on each of such islands oil or gas for shipment therefrom by the end of the twenty-third year from the Effective Date, or exclude from the Area of any continuation of the Agreement under Section B of Article 49 any such island from which oil or gas has not been so produced.

For the purposes of this letter the groups of islands referred to above shall consist of

- Group 1 - Qishm, Hengam and Hormuz
- Group 2 - Hindurabi, Qais and Shu Aib
- Group 3 - Kharg and Khargu

and each group shall include the area lying within a line three miles offshore from the lowest tide line of each of such islands in that group.

The obligations undertaken by this letter shall be performed through the Exploration and Producing Company and shall be subject to the provisions of the Agreement as if this letter were itself a part of the Agreement.

This letter shall be deemed to be dated as of the Effective Date of the Agreement.¹⁰⁸

It is to be noticed that the letter did not mention the three disputed islands. Anglo-Iranian Oil Company had been granted permission to search by the government of Ras al-Khaimah in 1935, and had then asked to whom the island of Tunb belonged. Iran did not draw attention to the absence of the three islands from the definition, as had the ruler of Ras al-Khaimah in 1935. They kept silent over the matter, and three Iranian official departments ratified it; these were the Iranian Embassy in London, the Iranian Consulate in New York, and the Iranian Consulate in Lahay.¹⁰⁹

This indicates that official Iranian bodies recognized that the three islands were not under Iranian sovereignty. Otherwise, they would have asked to add these islands to one of the groups of islands under the Iranian sovereignty, even if in a later letter.

8.8. Conclusion

I conclude from the above that the governments of Sharjah and Ras al-Khaimah practised different forms of sovereignty, such as administrative and legal, over the three islands of Abu Musa and the Greater and Lesser Tunbs until the date of the Iranian occupation of the islands on 30 November 1971. This was done effectively and in a continuous and peaceful fashion, in proportion to the circumstances of the islands in terms of area and size of population. Moreover, the inhabitants of the islands had the feeling of belonging, and accepted the rule of the governments of Sharjah and Ras al-Khaimah which led to their effective cooperation in the administration of the islands.

¹⁰⁸ - BP Archive, 109133 Iranian Oil Participants' Agreements 19-24 September 1954.

¹⁰⁹ - Ibid. Also see Appendix A, Doc. 17, P.288.

I also conclude that some Arab and non-Arab countries recognized the sovereignty of the governments of Sharjah and Ras al-Khaimah over the three islands, and the allegiance of the inhabitants to the two governments. Even Iran accepted and recognized formally, in many instances, this sovereignty and the allegiance of the inhabitants.

Following the discussion of the dispute over the three islands in the previous chapter, the question should be answered: How should the dispute between Iran and the UAE be solved?

CHAPTER NINE

Possible Means of the UAE to Achieve Pacific Settlement of the Dispute

9.1. Introduction

Since the Iranian occupation of the three islands of Abu Musa, Greater Tunb and Lesser Tunb, the governments of Sharjah and Ras al-Khaimah have been trying to find a peaceful settlement for this dispute with Iran, according to Article 33 (1) of the UN Charter. This sets out the means which should be followed to reach a pacific settlement:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Initially this was done by contacting Arab countries to present the dispute to the Security Council in order to find a settlement of the dispute without any violence. Since the admission of Sharjah to the UAE on 2 December 1971 and the admission of Ras al-Khaimah on 10 February 1972, the UAE has endeavoured by diplomatic and political means¹ to find a settlement for the dispute, since it represents the two governments in front of the international community.

¹ - According to some authors, the pacific settlement of disputes is divided into diplomatic, legal and political means. Diplomatic means include negotiations, good offices, mediation, inquiry and conciliation; legal means include international arbitration or the court; whereas political means include international and regional organisations. See A.S. Abu Haif, *al-Qanoun al-Dawli al-Aam (Public International Law)*, (1995), P.727. Also M.A. Shokri, *Msalt al-Juzur fi al-Khaleej al-Arabi wa al-Qanun al-Dawli (The Case of the Islands in the Arabian Gulf and International Law)*, (1972), P.224. Also F.A. Taha, *al-Qanwn al-Dwly wa Mnazaint al-Hadud (International Law and Boundary Disputes)*, (1982), P.147. Also M. Al-Mjthob, *al-Qanoun al-Dawli al-Aam (Public International Law)*, (1994), P.425.

The aim of this chapter is to highlight the attempts made by the UAE to settle the dispute peacefully with Iran, and the peaceful methods which the UAE can adopt to regain possession of the three islands. I will first explain the UAE efforts to present the dispute to the Security Council for a settlement. Then I will discuss the Abu Dhabi negotiations in 1992 between the parties, and the use of the good offices of the State of Qatar for dispute settlement. Finally, I will present my opinion on how to reach a peaceful settlement to this dispute.

9.2. The UAE presenting the dispute to the Security Council for a settlement

The Security Council plays a great role in the settlement of disputes, which first has the right to invite the disputing parties to settle their dispute by peaceful means.² If the disputing parties fail to settle their dispute by peaceful means, it is then obligatory that they present the dispute to the Security Council.³ It is permissible, however, for the disputing parties to present their dispute to the Security Council directly, without referring firstly to peaceful means. In this case, the Security Council would issue its proposals for the peaceful settlement of the dispute.⁴ These proposals are not obligatory and it is up to the disputing parties to adopt these proposals or refer to other peaceful means,⁵ as long as they do not adopt measures which would either keep the dispute going or allow the to situation.

On 3 November 1971, the day of the occupation of the two islands of Greater Tunb and Lesser Tunb by Iranian forces, the government of Ras al-Khaimah sent a message to the Secretary General of the UN and another to the Security Council

² - Article 33 (2) of the Charter of the UN.

³ - Ibid. Article 37 (1).

⁴ - Ibid. Article 38.

⁵ - Ibid. Article 48-49.

requesting their intervention to end the Iranian occupation by the Iranian withdrawal from the two islands and sought their help in settling the dispute peacefully.⁶ The government of Ras al-Khaimah did not find any positive reaction from either, which made it have recourse to Arab countries and urge them to raise the issue at the UN.⁷

After the request of the government of Ras al-Khaimah, an urgent complaint was presented to the Security Council on 30 December 1971 by Iraq, Algeria, Libya and Southern Yemen. They asked for an emergency meeting of the Security Council. Accordingly, on 9 December 1971 the Security Council held a meeting especially to discuss the case and find a peaceful settlement for the dispute'after inviting the four Arab countries who had presented the request plus Kuwait, UAE and Iran to join in discussing the case of the occupying of islands'without giving any of them the right to vote.⁸

After a discussion of a few hours without coming to a solution, the Somali representative, who at the time was a non-permanent member of the Council, proposed ending the meeting and postponing the discussion to a future meeting, to be arranged later, in order to give a chance for diplomatic efforts to look for a settlement.⁹ Accordingly, the case was postponed and has not been discussed by the Security Council since then.

It is worth mentioning that the Security Council issued document No. S/1996/603 on 26 August 1996 which sought to reduce the Council's agenda by removing disputes which had been pending before it for than five years. Among these problems was the case of the Iranian occupation of the three islands of Abu

⁶ - See these letters in Vinson & Elkins: Attorneys at Law, Report on the Tunb Islands, Submitted to Ras al-Khaimah Government, Houston-Texas, (1980), P.Doc. No.303.

⁷ - Ibid. P.Doc. No.302 + 305.

⁸ - See SCOR, 26 Year, 1610 the Meeting: 9 December 1971, P.3-4.

⁹ - Ibid. P.24.

Musa, Greater Tunb and Lesser Tunb. The permanent representative of the UAE to the UN objected to their being dropped and sent a message to this effect to the chairman of the Council. He emphasised the necessity of keeping the case of the Iranian occupation for the three islands on the agenda until the Iranian government ended her illegal occupation of the three islands and the UAE governments regained their actual sovereignty over the three islands. The Security Council, in response to this request, refrained from cancelling the case of the occupation of the three islands from its agenda until Iran ended her occupation of the islands.¹⁰

The dispute over the three islands has continued without any developments since 1971. No diplomatic contact was made to search for a peaceful settlement until the Islamic revolution in Iran in 1979. Mr. Rashed Abdullah, the Minister of Foreign Affairs for the UAE, sent a letter to the Secretary General of the UN declaring his country's wish to settle the dispute with the new government of Iran by diplomatic means.¹¹ The Iranian government did not respond to this invitation. The situation remained without any development despite the efforts of some Arab countries who suggested mediating in the dispute, but all initiatives were refused by the Iranian government. The Iranian refusal remained until 1992, when the Iranian navy prevented some of the inhabitants of Abu Musa and those who worked on the island from entering it. This behaviour initiated a reaction from the government of UAE, since it contradicted the Memorandum of Understanding which Iran had signed with the government of Sharjah.¹² The government of the UAE requested the Iranian government to enter into negotiations between the two countries.

¹⁰ - See Appendix A, Doc. 18, P.294.

¹¹ - *Al-Khaleej*, 21 August 1980.

¹² - See Chapter 3, P.61.

9.3. Abu Dhabi negotiations in 1992 between the UAE and Iran

Negotiation is the exchange of opinions between two disputing states with the aim of reaching a solution of the active dispute between them.¹³ Negotiations are carried out by direct communications, which are done by presidents of states and ministers of foreign affairs or their representatives. This is usually done in an international conference which is held with the aim of finding a settlement for a specific international dispute. The advantage of this means is that it happens with much freedom for all parties, allowing the parties to continue or postpone the negotiations for good reasons.¹⁴

Following the request of the government of UAE, on 26 September 1992 the Iranian government sent to Abu Dhabi, the capital of the UAE, a high-level delegation chaired by Mustafa Haeri, the head of the Department of the Gulf in the Ministry of Foreign Affairs and the advisor of the Iranian Minister of Foreign Affairs on the affairs of the Gulf. The aim of the delegation was to negotiate on the dispute of Abu Musa which had led to the disturbance in relations and the prevention of inhabitants and workers entering the island.

Negotiations began on the second day after the arrival of the Iranian delegation in Abu Dhabi. The UAE side was chaired by Ambassador Saif Saed, the director of the Department of the Gulf Cooperative Council at the Ministry of Foreign Affairs in the UAE. Ambassador Saed presented an agenda for the negotiations concerning the three islands.¹⁵ The head of the Iranian delegation rejected the agenda presented by the UAE with the justification that they had come to the UAE to discuss the problem of Abu Musa and the events which had led to preventing people entering

¹³ - See M.N. Shaw, *International Law*, (1991), P.633. Also Abu Haif, op. cit., P.728.

¹⁴ - J.G. Merrills, *International Dispute Settlement*, (1993), P.8. Also Al-Mjthob, op. cit., P.425.

¹⁵ - See Chapter 3, P.61-2.

the island. They had not been given permission to discuss other matters. Also, the Iranian government would not accept any discussion about the islands of Greater Tunb and Lesser Tunb because it was not permitted for anyone to discuss the sovereignty of any of the Iranian lands.¹⁶

In response to the reaction of the Iranian delegation, the UAE delegation insisted on following the agenda by discussing the dispute over the three islands, and not Abu Musa on its own. The Iranian delegation refused to proceed and returned to Iran. This led to the failure of negotiations between the two parties after only one day. The UAE blamed the Iranian side for the failure of the negotiations by its refusal to discuss the three islands. In the meantime, the Iranian Embassy in Abu Dhabi stated on 30 September 1992 that the negotiations had failed because of the UAE which had put forward for discussion irrelevant matters that had nothing to do with the dispute over the island of Abu Musa. The Iranian government was still ready to continue negotiations over Abu Musa.¹⁷

After the failure of these negotiations, the dispute over the three islands continued without any communication aiming at a peaceful settlement, until the initiative was taken by the state of Qatar in its good offices to bring the two disputing states to the negotiation table on 18 November 1995.

9.4. Good offices of the State of Qatar for dispute settlement

When negotiations between two disputing states do not lead to a settlement, then the intervention of another state, a regional or an international organisation, or even a

¹⁶ - *Al-Ittihad*, 29 September 1992.

¹⁷ - See the Iranian Embassy letter on the Special File of Three Islands Case, Abu Musa, Greater Tunb and Lesser Tunb, Vol.2, Department of Information, International and Arab Research Centre, Al-Ittihad Institute for Publisher and Journalism, (1992), P.268.

figure of great standing may be needed and may be able to bring the two parties back to the negotiating table.

A state, a regional or an international organisation, or a figure of great standing may offer good offices to find a way to convince the disputing parties to carry out direct negotiation, or try to convince them to reach a pacific settlement.¹⁸ The aim of the good offices is limited to bringing together the two parties to the negotiating table, without playing any role in the actual negotiation or the eventual settlement of the dispute.¹⁹ An example of good offices was the role played by the American President in 1906 in concluding the Russian-Japanese War, and also the role played by the United States to settle the dispute between Indonesia and Holland in 1947, aiming to put an end to the conflict between the two parties.²⁰

In an initiative to end the tension in the Gulf region and to maintain international peace and security, the state of Qatar began good offices efforts to try to bring the two disputing parties to the negotiating table. As mentioned earlier, Qatar succeeded convincing the Iranian government and the government of UAE to resume negotiations.²¹ This was in Doha, the capital of Qatar; a delegation of experts from both sides arrived in Doha on 18 November 1995. At the beginning of the first session, the delegation of UAE suggested arranging an agenda according to the invitation which had been sent to them by the Qatar Minister of Foreign Affairs. He stated that such an agenda's aim would have the aim of settling the dispute between them. Accordingly, the delegation of UAE requested that the agenda should include the following:

¹⁸ - Shaw, op. cit., P.634. Also R.M. Wallace, *International Law*, (1992), P.267. Also A.A. Ali, *al-Wagiz fi al-Qanoun al-Dawli al-Aam (Concise Public International Law)*, (1989), P.475.

¹⁹ - Merrills, op. cit., P27. Also Abu Haif, op. cit., P.729.

²⁰ - Al-Mjthob, op. cit., P.426.

²¹ - See Chapter 3, P.62.

1. Ending the military occupation of the islands of Greater Tunb and Lesser Tunb.
2. Abiding by the Memorandum of Understanding which was signed in 1971 regarding the island of Abu Musa and cancelling any measures which contradicted the Memorandum.
3. Deciding the issue of sovereignty over Abu Musa island
4. Referring the dispute over the three islands of Abu Musa, Greater Tunb and Lesser Tunb to the International Court of Justice, if negotiating a settlement was not possible within an agreed time limit.²²

The Iranians rejected the agenda presented by the UAE, as they saw the meeting at Doha as a preparation for a meeting of the foreign ministers of the two countries without being tied to any agenda, since ministers have the authority to discuss any matter they wish.²³ After four days of negotiating, each country insisted on its stand, which led the negotiations to a dead end. Thus, the Doha meeting failed and the two delegations returned to their countries with no advance in the direction of a peaceful settlement.

After the failure of the Doha meeting, which was the result of the failure of the negotiating experts to reach the desired aim in the light of the good offices of the state of Qatar, the UAE declared that it was renewing its invitation to Iran to reach a peaceful settlement of the dispute, and that this may include referral to the International Court of Justice.²⁴ No response was made to this invitation on the part of the Iranian government. This led to the end of all diplomatic communications between the two sides aimed at reaching a settlement on the dispute over the three islands, a situation which still continues to this day.

²² - *Al-Ittihad*, 19 November 1995.

²³ - *Ibid*.

²⁴ - *Al-Khaleej*, 22 November 1995.

After discussing the efforts to reach a peaceful settlement of the dispute over the three islands between UAE and Iran, and their repeated failure because of the insistence of the Iranian side not to discuss the dispute over the islands of Greater Tunb and Lesser Tunb, and their refusal to refer the case to arbitration or the International Court of Justice, thus the question remains: how can a peaceful settlement of the dispute be reached?

9.5. Separate opinion of view on the settlement of the dispute over the three islands

There is no doubt, after discussing the different acts of sovereignty exercised by the governments of Sharjah and Ras al-Khaimah over the three islands, that the ownership of the islands goes to the present UAE. Iran is not known to have exercised any sovereignty over the islands. It is therefore unjust to say that the three islands belong to Iran or that the UAE should give up her claim of the islands, unless it were to be proved that Iran does have evidence of practising sovereignty over the islands, more than that practised by the UAE.

The three islands, therefore, should be returned to the UAE, whose they were before 30 November 1971, but not by the use of armed force. I disagree with the use of force to return the islands, no matter whether this were to be carried out by Arab forces supporting the UAE forces or by allied forces under the umbrella of the UN. Any such solution would not be in the interest of the UAE, since this would engender hatred and bad feeling between the two countries, which could lead the region to war.

Having ruled out the use of force, the best way to bring back the islands, it appears, is by peaceful means. Since all diplomatic and political efforts of settlement have failed, one means remains; this is, a legal settlement either by arbitration or the

International Court of Justice. The first way is defined by International Law Commission as “a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted”.²⁵ International arbitration means deciding on disputes between states according to the rules of law by judges chosen by the disputing states.²⁶

Therefore, the disputing parties have total freedom to choose the judges, and define their number. It is possible for the tribunal to comprise one person or a number of persons. It is also left to the disputing parties to define the law to be applied by the arbitration, the proceedings and the duration of issuing the arbitration.²⁷

Arbitration is, thus, a measure which is taken with the acceptance and the free will of the disputing parties. No state should be forced into accepting arbitration. The acceptance to refer to arbitration may be given before, during or after the dispute.²⁸

The acceptance of arbitration should be prior if a state is signing a treaty by which it accepts reference to arbitration any dispute which may arise, or a particular kind of dispute. For example, on 28 May 1902 Argentina and Chile signed a treaty, according to which they agreed to refer to the British government any dispute which may occur between them, no matter what its nature.²⁹

The later agreement occurs when an agreement is made between two states to refer an active dispute between them to arbitration. For example, the dispute

²⁵ - YbILC, Vol.II, (1953), P.202.

²⁶ - See Article 37 of Convention for the Pacific Settlement of International Disputes in 1907, UKTS, No.6, (1971), Cmnd. 4575.

²⁷ - M. Whiteman, *Digest of International Law*, Vol.12, (1971), P.1047.

²⁸ - Taha, op. cit., P.148. Also S.M. Bader al-Din, *al-Thkim fi Mnazaint al-Hadud al-Dwaliah (Arbitration in International Boundaries Disputes)*, (1991), P.203-4.

²⁹ - BFSP, Vol.95, P.764.

between Britain and France concerning delimitation borders of the continental shelf between the two countries in the English Channel was referred to arbitration according to a mutual agreement on 10 May 1975;³⁰ and the dispute over the delimitation boundary between Sharjah and Dubai was referred to arbitration according to a mutual agreement signed on 30 November 1976 by the ruler of Sharjah and the ruler of Dubai.³¹

The arbitral decision is binding on all parties with no need for further acceptance or confirmation. This is because referring to arbitration is considered acceptance of the means and an obligation to abide by its final ruling.³² The ruling of arbitration is considered final and cannot be reviewed by any other body.³³ However, it is acceptable for any of the disputing parties to review the ruling if after its delivery a new fact is discovered which could have influenced the arbitration in a decisive manner if it had been known to the arbitral tribunal. It is also possible to object if the arbitration tribunal exceeded the powers and limits given to it according to the agreement to refer to arbitration.³⁴

Although the arbitral decision is binding, it is not executive, in the sense that it should not be imposed by the use of force against the will of the losing party. At the end of the day, the execution of the ruling of arbitration relies on the honesty of the losing party and its good intention.³⁵ It is a common practice for different states to accept and execute the arbitral decision with a few exceptions, where one of the parties refuses to abide by the decision. For example, the USA rejected the ruling of

³⁰ - ILM, Vol.18, (1979), P.397.

³¹ - ILR, Vol.91, P.550.

³² - Article 38 of Convention for the Pacific Settlement of International Disputes in 1907, UKTS, No.6, (1971), Cmnd. 4575. Also see Abu Haif, *op. cit.*, P.746.

³³ - *Ibid.* Article 81.

³⁴ - *Ibid.* Article 83.

³⁵ - Shokri, *op. cit.*, P.437. Also Taha, *op. cit.*, P.153.

the international arbitration on its dispute with Mexico over the territory of Chamizal in 1911.³⁶ However, after the visit of the American President to Mexico in 1962 the two parties expressed their desire to execute the ruling of the arbitration of 1911 in the light of the contemporary circumstances. This was expressed in a treaty signed in August 1962.³⁷ Another example was the rejection of Argentina of the ruling of the arbitration concerning the dispute over Beagle Channel with Chile in January 1978.³⁸ In January 1979, the two parties accepted the mediation of Pope John Paul II in search for a settlement for the dispute.³⁹

The second way means of settling a dispute between two states or more by the judgment issued from a permanent forum which contains independent judges, chosen earlier.⁴⁰

From this definition the difference between an international court and international arbitration becomes obvious. The existence of the Court is prior to the dispute, and continues after its settlement. Arbitration does not enjoy this permanence, as it is usually formed after the start of a dispute and is dissolved after the settlement of the dispute. The members of the Court are not elected by the disputing parties, as is the case for the arbitration.⁴¹

The first appearance of international court was in 1920, when the League of Nations decided to found the Permanent International Court of Justice, which played

³⁶ - RIAA, Vol.11, P.309.

³⁷ - AJIL, Vol.58, (1964), P.336.

³⁸ - ILM, Vol.17, (1978), P.738.

³⁹ - ILM, Vol.18, (1979), P.1.

⁴⁰ - See Article 2 of the Statute of the International Court of Justice.

⁴¹ - J.I. Brierly, *The Law of Nations*, ed. H. Waldock, (1963), P.347. Also Merrills, op. cit., P.109-10. Also Taha, op.cit., P.156. Also Shokri, op.cit., P.434. To mention, there is an exception of Permanent Court of Arbitration: for more details refer to H. Schlochauer, *Permanent Court of Arbitration*, EPIL, Vol.1, (1981), P.157.

a great role in settling disputes between states. This Court continued to exist until 1945 when the International Court of Justice replaced it, and still exists today.⁴²

The International Court decides cases which are presented to it according to a agreement between the disputed parties to refer their dispute to the Court. Agreements are the basis according to which most regional disputes over sovereignty have been referred to the Court, such as the *Minquiers and Ecrehos* case between France and UK,⁴³ and the *Continental Shelf* case between Libya and Malta.⁴⁴

The decision of the Court is binding for the disputing parties and for the dispute,⁴⁵ and is considered final and cannot be reviewed. It is, however, permissible to review it if a critical fact which was not known by the Court and the party which is requesting a review is discovered.⁴⁶

According to Article 94 (1) of the United Nations Charter, “Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party”. The Security Council has the power to issue recommendations or resolutions to implement the decision of the International Court. Article 94 (2) of the Charter states that:

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, Which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Along similar lines to the International Court of Justice, a few projects have been initiated for courts attached to regional organisations, such as the Organisation of the

⁴² - See Article 92 of the Charter of the UN.

⁴³ - ICJ Rep., (1953), P.47.

⁴⁴ - ICJ Rep., (1985), P.13.

⁴⁵ - Ibid. Article 59.

⁴⁶ - Ibid. Article 60-61.

Islamic Conference⁴⁷ and the Arab League,⁴⁸ which aim to settle disputes between the members of the organisations. They do not differ much from the International Court of Justice. They have, however, not yet been established.

These are the two ways which would lead to a legally binding settlement. Neither of the two disputing parties would be able to object to any settlement reached since both would have accepted this means. The obstacle is the Iranian refusal to agree to a legal settlement of the dispute over the three islands-despite the fact that earlier international disputes involving Iran have been considered by the International Court of Justice.⁴⁹ How, then, will Iran accept a legal settlement of her dispute with the UAE?

In my opinion, since both Iran and UAE are members of the Organisation of the Islamic Conference, and given their religious ties through this organisation and their geographic proximity, there is a chance that the organisation could play a role in the settlement of the dispute between the two parties, instead of the UN.⁵⁰ The two parties should, therefore, present their disputes to their regional organisations before referring to the UN to search for a peaceful settlement. The Security Council

⁴⁷ - On the Charter of the Organisation of the Islamic Conference, See UNTS, Vol.914, P.111.

⁴⁸ - On the Charter of the Arab League, See UNTS, Vol.70, P.248.

⁴⁹ - See e.g., the Anglo-Iranian Oil Co. case, ICJ Rep., (1952), P.93. US Diplomatic and Consular Staff in Tehran case, ICJ Rep., (1980), P.3.

Furthermore, in 1970 Iran accepted the formation of an inquiry committee concerning the island of Bahrain. This committee was chaired by the general director of the Geneva office of the UN. It began the inquiry in March 1970 and presented its report to the Security Council on 11 May of the same year, with the suggestion of the independence of Bahrain and the refusal of the Iranian request to annex it to the Iranian lands. The Security Council agreed with the suggestions of the committee. After that the Shah of Iran declared his acceptance of the Security Council resolution. The Iranian Parliament then confirmed his decision. Since then Bahrain has been an independent state. ILM, Vol.9, (1970), P.787. Also see H. Al-Baharna, The Fact-Finding Mission of the United Nations Secretary-General and the Settlement of the Bahrain-Iran Dispute, May 1970, ICJQ, Vol.22, (1973), P.541.

⁵⁰ - For more details of means of pacific settlement by the Organisation of the Islamic Conference see M. Al-Rashidi, Positive Approach to the Disputes over the Three Islands: Abu Mosa, Tunb Al-Kubra and Tunb Al-Sughra, The Journal of Shari'a and Law, November 1996, P.1.

encourages the search for the peaceful settlement of disputes through regional organisations. Article 52 (3) of the UN Charter states that:

The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

Thus the role of regional organisations is complementing the Security Council in keeping international peace and security between members. It is natural, therefore, to be interested in guaranteeing the regional security of members, and the observation of sovereignty between member states. Otherwise the existence of regional organisations would be meaningless.

The Organisation of the Islamic Conference played a major role in ending the Iran-Iraq war, because of the damage this war had caused to its members, especially to the Gulf states. At the beginning of the war the Ministers of Foreign Affairs of Islamic countries in September 1980 formed a committee of good offices to look for a peaceful settlement. The committee continued its efforts during the war, with continual communications with the two sides until it was possible to end the war in 1988.⁵¹

Concerning the dispute over the three islands, the Organisation of the Islamic Conference should endeavour to reach a settlement of the dispute between the UAE and Iran and put an end to the tensions which could lead to a war between the two parties, with the danger of its expansion to the other states of the Gulf which could result in the disintegration of the organisation. In my opinion, it is possible thus for the president of the Organisation to put diplomatic pressure on Iran to accept the

⁵¹ - See A. Al-Ashal, *Aswl al-Tnthim al-Islami al-Dwali* (The Origin of Islamic Organisation), (1988), P.298-302. Also see *Musuat al-Alum al-Siasiah* (Encyclopedia of Political Science), Vol.1, (1994), P.1158-9.

reference of the dispute to arbitration. Article 2 (B-4) of the constitution of the Organisation of the Islamic Conference provides that, “settlement of any conflict that may arise by peaceful means such as negotiation, mediation, reconciliation or arbitration”.⁵² The other option is to refer the dispute to the International Court of Justice.

Should the Iranian government not respond to the good offices of the Organisation of the Islamic Conference, the only remaining avenue will be to refer the dispute to the General Assembly of the UN. This should be done by insisting on its sovereignty over the three islands, and by requesting a legal settlement of the dispute until the Iranian government responds.

9.6. Conclusion

We conclude from the above that the UAE will not be able to get back the three islands except by a legal settlement of the dispute. This can be achieved by diplomatic pressure through the auspices of the Organisation of the Islamic Conference or the General Assembly of the UN. All other attempts to reach a political diplomatic solution have failed because of the Iranian refusal to discuss sovereignty of the islands of Greater Tunb and Lesser Tunb. Diplomatic efforts by the UAE had been made by going to the Security Council of the UN, then by direct negotiation with the Iranian government, and eventually by sitting round a table for free negotiation initiated by Qatar.

⁵² - UNTS, Vol.914, P.111.

CHAPTER TEN

Concluding Observations

I will try in this conclusion to highlight the main points discussed in the present research on the dispute between Iran and the UAE about sovereignty over the three islands of Abu Musa, Greater Tunb and Lesser Tunb. I will also highlight the results reached.

I started with the emergence of the UAE and the circumstances in which territories of the state were established, since Sharjah and Ras al-Khaimah are part of the union and the three islands follow these two Emirates. The two Emirates were governed by the tribe of Qawasim, which had marine and land power and with which it had controlled territories in the Gulf at the beginning of the nineteenth century. This had led to the occurrence of repeated battles between them and the British armed forces in their attempts to control the Gulf, which gradually weakened the Qawasim. This eventually forced them to sign treaties with the British, the last being in 1892. This treaty gave Britain the right to administer the foreign affairs of the two Emirates for their protection from any external attack on the Qawasim land but, as with previous treaties, it did not give the British government the right to sell or lease territories or even to determine borders.

I concluded that the treaties between the British and the rulers of the two Emirates recognized, formally, the political identity and legal status of the Emirates. Since the treaties were signed between two countries they were not a British colony as they are commonly thought to be. Britain did not satisfy its obligation under their treaties to protect the two Emirates. This led to their loss of control over some of the

territories which belonged to them, amongst which were the three islands of Abu Musa, Greater Tunb and Lesser Tunb.

Then I defined the three islands concerned and we also looked at the historic background of the dispute. I reached the conclusion that this dispute at different times as a result of the Iranian interest in the mineral wealth in the land and territorial waters of the islands. These interests led the Iranian government to occupy the two islands of Greater Tunb and Lesser Tunb by the use of force against the government of Ras al-Khaimah on 30 November 1971, and to the dividing of the island of Abu Musa with the government of Sharjah on 29 November 1971.

Then I discussed the modes of acquiring territory according to international law, and applied the findings on the legal validity of the arguments on which each party builds its claim for sovereignty over the three islands. I established that Iran cannot base its occupation of the islands of Greater Tunb and Lesser Tunb on the assumption that they are a *terra nullius* territory. Events prove otherwise, for there were inhabitants on the island of Greater Tunb who were loyal to the government of Ras al-Khaimah. Also the government of Ras al-Khaimah had practised full sovereignty over the two islands until the day of the Iranian occupation.

The Iranian government may not base its claim on the passing of time as a historic right after a period of her occupation of the islands. This is because an essential condition of acquiring sovereignty over a territory, by acquisitive prescription, is that the acquisition did not occur by the use of force in the first place. It is established that occupying the island by the Iranian forces was met by resistance on the part of the inhabitants, which led to the death of some of them. Moreover, the use of force to occupy the two islands was forbidden according to the Charter of the United Nations Article 2 (4). Also the international community does not recognise

territorial acquisition which is the result of the use of force. An example is the refusal of recognition on the part of the international community of the Iraqi occupation of Kuwait in August 1990.

Concerning the island of Abu Musa, it cannot be considered that Sharjah granted the island to Iran according to the Memorandum of Understanding. For it is stated in the introduction to the Memorandum that each of the parties does not recognise the sovereignty of the other over the island. I concluded that the Memorandum was a temporary settlement for the problem of the island of Abu Musa until a permanent one was found.

I then established that Iran cannot base her occupation of the islands on the concept of historic right because documents prove otherwise. Britain had recognised that, from the beginning of her presence in the Gulf, there was no trace of any Iranian practise of sovereignty over the three islands.

I concluded that it is the UAE which can base its sovereignty over the three islands on the concept of historic rights, since these islands never belonged to anyone save the Qawasim, the rulers of Sharjah and Ras al-Khaimah. Their sovereignty over the islands is founded on the basis of immemorial possession. I suggested that the UAE should base her claim for sovereignty on the extent of her actual practises of sovereignty over the islands before the Iranian occupation; a chapter was devoted to this particular point.

Then I mentioned the evidence on which Iran built its claim for the three islands. There are three principal claims: its historical right of ownership to the islands; the recognition by the British map of 1886 of Iranian sovereignty over the islands; and the strategic importance of the islands for Iran. I concluded that the Iranian right of ownership over the islands is not supported by any documents or

other evidence. On the contrary, British documents and the opinion of some Iranian writers confirm that the Iranian government never practiced any kind of sovereignty over the islands in any materialistic way. Concerning the strategic importance of the islands for Iran, I clarified that legal experts consider this a political and not a legal argument. I proved with court rulings that geographic proximity does not grant sovereignty over a territory. I discussed the argument built on the British map of 1886 in a separate chapter.

A chapter was devoted to the discussion of maps, with particular emphasis on the map of 1886 which Iran uses in her claim of sovereignty over the three islands. I discussed different kinds of maps, their legal power and the extent of acceptance by courts of maps as evidence for sovereignty over a territory. I concluded that both kinds of maps, official and unofficial, should be executed with a degree of precision in information and drawing techniques, and that a official map is more decisive than a private one, especially if annexed to a treaty and mentioned as an inseparable part of the treaty. It was also concluded that in most cases of territorial disputes, the court looked at maps with a degree of suspicion and reservation, because of lack of precision in drawing and the great number of mistakes in their contents.

I concluded that the map of 1886, on which Iran builds her sovereignty over the three islands, is not a official map for determining borders. Rather it was a map for the purpose of navigation. Moreover, it was a present given to the Shah of Iran in 1888-i.e. it was from a third state not related to the region at the time. I also stated that the dates of drawing the map were before the signing of the treaty of 1892, which treaty gave Britain the right to manage the foreign affairs of Sharjah and Ras al-Khaimah. Britain did recognise, on different occasions and clearly, the sovereignty of Sharjah and Ras al-Khaimah over the three islands, before and after

the map had been drawn. I therefore concluded that it is difficult to accept the map as evidence for Iranian sovereignty over the three islands.

I discussed the critical date in the dispute over the three islands and how to define it. I stated that the critical date should be the date when the aspects of dispute were crystallized. When correspondence between parties stop, negotiations stop and each party adopts a final stand in the case. Accordingly, any act to improve or support the legal stand of the parties after this date is unacceptable and illegal.

I concluded that the date on which aspects of the dispute between Iran and the UAE were crystallized was 29 November 1971 for the island of Abu Musa, which was the date when the Memorandum of Understanding was accepted by the governments of Iran and Sharjah, and 30 November 1971 for the islands of Greater Tunb and Lesser Tunb, which was the date of the Iranian occupation of the two islands. Accordingly, any acts or activities to improve and support the legal stand of either of the disputing parties after these dates are considered void and without effect. Sovereignty acts should be defined according to the legal position existing before the two dates.

I said at the end of discussing this dispute that, in most regional disputes, the court builds its ruling on the acts of sovereignty presented by the disputing parties. I proved that different forms of practising sovereignty, such as administrative and legal, were undertaken by the governments of Sharjah and Ras al-Khaimah over the three islands until the date of the Iranian occupation of the islands. This had not been proved in the published documents and evidence which I collected and had not been discussed before in any study of this dispute. I also shed light on the recognition of the allegiance of the inhabitants of the islands to Sharjah and Ras al-Khaimah by Arab and non-Arab states, including Iran.

Since I have proved that the three islands belong to the UAE, these islands should be returned to the UAE as was the situation before the Iranian occupation. I therefore end this research by putting forward a vision of how to settle the dispute. I stated that the settlement of this dispute must be achieved by peaceful means, which were mentioned in Article 33 (1) of the United Nations Charter. I disagree with any kind of force to take back the three islands.

Since the Iranian occupation of the three islands, the UAE has tried to find a settlement for the dispute by peaceful means. It first went to the Security Council, then tried direct negotiation. It then accepted the good offices made by the State of Qatar. However, failure was always the result because of Iran's insistence that it would not discuss the occupation of the islands of Greater Tunb and Lesser Tunb. I therefore suggest the remaining avenue, after the failure of attempts to reach a diplomatic or political settlement, i.e. a legal settlement. I also suggest that pressure should be exercised by the Organisation of the Islamic Conference and the General Assembly of the United Nations on Iran either to accept arbitration or to go to the International Court of Justice for it to issue a ruling.

I would like to advise the government of the UAE to continue to seek a peaceful legal settlement for the dispute at every international and regional event, to convince the international community to exercise pressure on the Iranian government. The UAE should also collect more documents and evidences to prove its sovereignty over the three islands, especially those which prove the practising of the governments of Sharjah and Ras al-Khaimah of administration and the imposing of legislation over the three islands. Those should include documents issued by local governments and the inhabitants of the two islands of Abu Musa and Greater Tunb,

so that they can be presented to the body of Arbitration or the International Court of Justice once a method of peaceful legal settlement is accepted.

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Appendices

Appendix **A**: Documents

Appendix **B**: Maps

Document 1

حكومة الشارقة وملحقاتها		جواز السفر	
SHARJAH STATE AND ITS DEPENDENCIES		PASSPORT	
No. of Passport ٤٧٩٢		رقم الجواز ٤٧٩٢	
Name of Bearer <i>Assad Fudel Abdullah.</i>		اسم حامل الجواز <i>أسد فاضل عبدالله</i>	
Name of Wife		اسم الزوجة	
THIS PASSPORT CONTAINS 48 PAGES		يحتوي هذا الجواز على ٤٨ صفحة	

حكومة الشارقة ومملكتها		جواز السفر	
SHARJAH STATE AND ITS DEPENDENCIES		PASSPORT	
TO ALL WHOM IT MAY CONCERN:		لـكـل من يطلع على هذا:	
GREETING.		تحية ،	
Honourable friends, the Officials of the Great Powers, and the Representatives of other Countries abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.		نود ونرجو من الاسماء الكرام رجال الدول المظلم وممثل الحكومات ان يسمحوا لحامل هذا الجواز حرية المرور من غير تعويق وتساخير ، ويسهلوا الصعوبات في سبيله ويراعوه بكل ما يحتاج اليه من المساعدة .	
Issued by order of His Highness the Ruler of SHARJAH AND ITS DEPENDENCIES		صدر بامر حاكم الشارقة ومملكتها	
Given at <i>Sharjah</i> .		في الشارقة تاريخ الخامس عشر	
the 15th Aug - 1967.		من أغسطس سنة ١٩٦٧	

DESCRIPTION		أوصاف	
THE BEARER	THE WIFE	الزوجة	حامل الجواز
Profession <i>Sea Captain.</i>			المهنة <i>رمان سفينة</i>
Place of Birth <i>Abu Moosa Island.</i>			محل الميلاد <i>جزيرة أبو موسى</i>
Date of Birth <i>1900.</i>			تاريخ الميلاد <i>١٩٠٠</i>
Domicile <i>Abu Moosa Island.</i>			الموطن <i>جزيرة أبو موسى</i>
Hight <i>ft. in.</i>		الطول <i>قدم قيراط</i>	الطول <i>قدم قيراط</i>
Colour of Eyes			لون العين <i>اللون</i>
Colour of Hair			لون الشعر <i>اللون</i>
Special Peculiarities			المميزات الخاصة <i>اللون</i>
GOVERNMENT OF SHARJAH AND ITS DEPENDENCIES		الإطفال	
CHILDREN		الاسم	
Name	Sex	Date of Birth	النوع
			تاريخ الميلاد

Document 1-a

5

Countries for which
this Passport is
valid

البلاد التي يقصد اليها بهذا
الجواز

All Arab Countries
India, Pakistan
and Iran.

جميع الزقطار العرب
الهند وباكستان وإيران

The Validity of this
Passport expires :

15.11.1968.

يتمهي العمل بهذا الجواز في :

15 أغسطس 1968

Unless renewed

الا اذا جدد

Issued at *Sharjah*

صدر في الشارقة

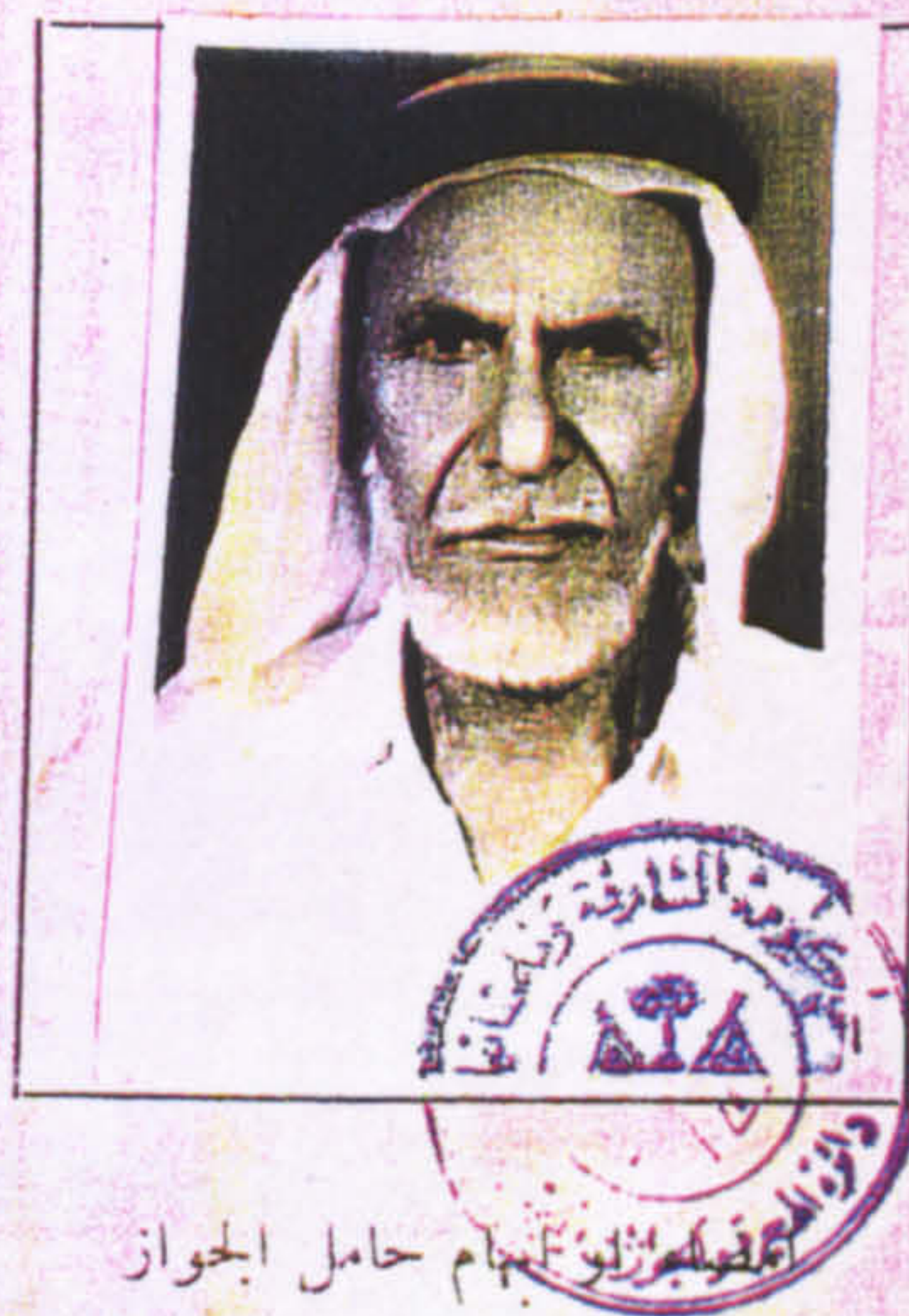
Dated 15.11.1967.

تاريخ 15 أغسطس 1967

4

صورة شمسية لحامل الجواز

Photograph of Bearer



Signature or Thumb Impression of Bearer

7

التجديدات

الرقم : ١٧٤٨

التجديد الثالث :

يعتبر هذا الجواز صالحا لغاية *1972/7/10*
اعتباراً من تاريخ *1971/7/10* حتى *1972/7/10*
This Passport is valid up to *One Year*
from *10.7.1971* to *10.7.1972*.



الرقم :

التجديد الرابع :

يعتبر هذا الجواز صالحا لغاية *1973/7/9*
اعتباراً من تاريخ *1972/7/9* حتى *1973/7/9*
This Passport is valid up to *One Year*
from *9.7.1972* to *9.7.1973*.

[Signature]

6

التجديدات

التجديد الاول : يعتبر هذا الجواز صالحا لغاية *1968/8/22*

اعتباراً من تاريخ *1968/8/22* حتى *1969/8/22*

This Passport is valid up to *one year*
from *22.8.68* to *22.8.69*.

[Signature]

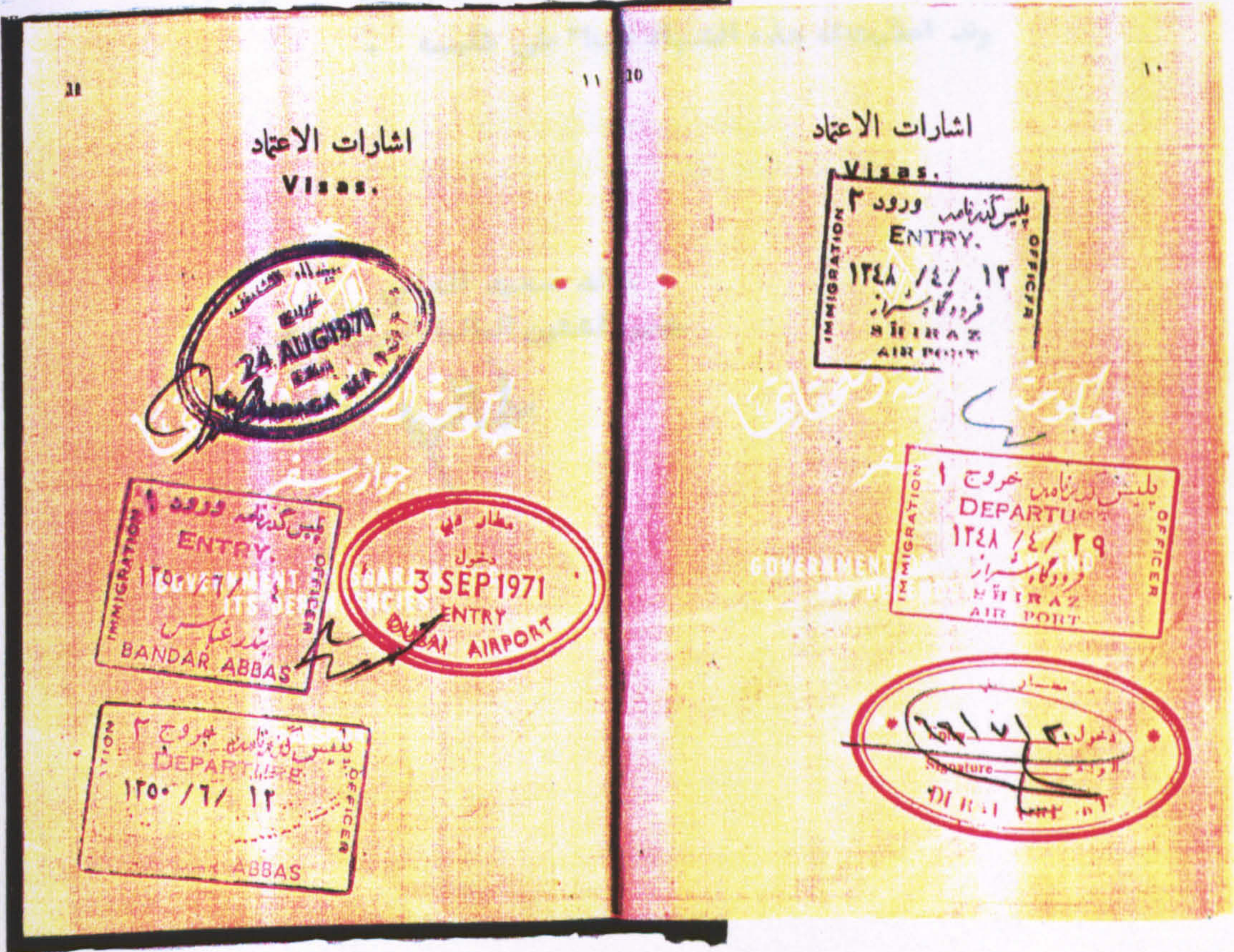
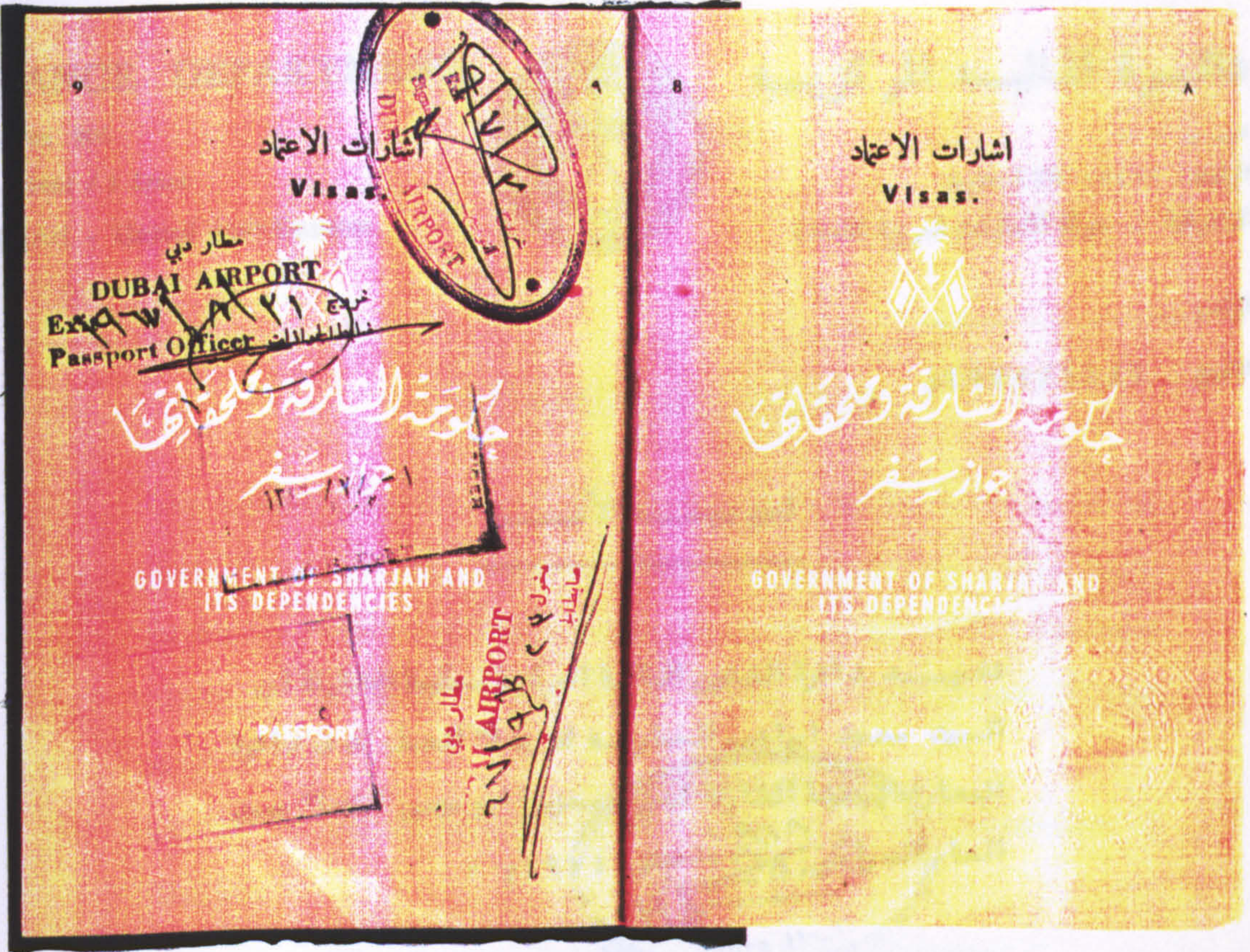
الرقم :

التجديد الثاني :

يعتبر هذا الجواز صالحا لغاية *1970/6/27*
اعتباراً من تاريخ *1969/6/27* حتى *1970/6/27*
This Passport is valid up to *One Year*
from *27.6.1969* to *27.6.1970*.

[Signature]

Document 1-b



Document 2

FINANCE DEPARTMENT

P. O. Box 201

Tel. 22461 / 3 Lines

SHARJAH - United Arab Emirates.



دائرة المالية المركزية

ص. ب ٢٠١

تليفون: ٢٢٤٦١ ثلاثة خطوط

الشارقة - دولة الامارات العربية المتحدة

No. _____

الرقم _____

Date _____

التاريخ ١٩٧٥/١١/١ م

لن يهمل الأمر

تشهد دائرة الشؤون المالية المركزية لحكومة الشارقة ان

السيد محمود ابراهيم الحمارنة قد بدأ العمل لدى دائرة

المعارف بحكومة الشارقة كـ مدير خزانة ابو موسى ابتداء من

العام الدراسي ١٩٧٥/١١/١ م

وكان خلال تلك الفترة قد حصل راتبه من خزانة حكومة الشارقة ،

وقد اعطيت له هذه الشهادة بناءً على طلبه .

خالد سعيد العلمي
مدير الشؤون المالية المركزية

خالد

Document 2-a

Translation

Date: 1/11/1975

To Whom It May Concern

The Central Department of Financial Affairs of the Government of Sharjah certifies that Mahmud Ebraheem Al-Hamarnah started work in the Department of Education at the Government of Sharjah, as a teacher in the island of Abu Musa, starting the school year of 1968 until 1971.

During this period he received his salaries from the Government of Sharjah.

This certificate was given to him according to his request.

Khalid Said Al-Alami
Director of Central Financial Affairs*

** Our translation. The original text is written in the Arabic language.*

Document 3إعلان
=====

يسرنا أن نعلن للجمهور الكريم بأن الفئار (البويه)
التي سبق أن وضعتها إيران في مياهنا الإقليمية بالقرب
من جزيرة (أبوموسى) في موقع ٢٠ ثانية ٥١ دقيقة
٢٠ درجة شمالاً و ٢٦ ثانية ٣ دقائق ٥٥ درجة شرقاً
لقد نقلناها تلك العوامه من يوم الجمعة ٥ ذوالحجه
١٣٨٢ هـ الموافق ١٧ إبريل ١٩٦٤ م ليحيى الجمهور
ملمماً بذلك .



صقر بن سلطان القاسمى
حاكم الشارقة وملحقاتها

٨ ذوالحجه ١٣٨٢ هـ
الموافق ٢٠ إبريل ١٩٦٤ م

TranslationDECREE

We are pleased to announce to the public
that the buoy which Iran had previously placed
in our territorial waters near the Island of
Abu Musa in the position 20° 51' 30" North and
55° 3' 26" East was removed by us on Friday,
5th Zul Hijja 1383, corresponding to April 17,
1964. This for the information of the public.

(Signed) Saqr Bin Sultan Al Qasimi
Ruler of Sharjah & Depend-
cies.

8th Zul Hijja 1383.
April 20, 1964.

Document 4

۲۴ ربیع الثانی ۱۳۰۰

[illegible]

Document 4-aTranslation

In 12 Muharram 1300 H

24 November 1882

To: Mr. Ross the Political Resident in the Gulf of Persia

Regards ... Dating in November, we knew from Sharjah that an act of theft occurred on the island of Abu Musa. Boxes which were in the house of the ruler of Sharjah on the island were broken. It is not known what was stolen from the house exactly. Three foot prints were found, they are preserved until the specialist (in recognizing foot prints) arrives.

The ruler of Sharjah sent, immediately, for a specialist, who was sent over from Ras al-Khaimah. He arrived on the island of Abu Musa accompanied by a few persons to examine the scene of the theft in the house of the Shaikh. On their arrival to the island of Abu Musa, the specialist who was called Sultan, realized that breaking the boxes was done under the impression that they contained cash, but when the thieves did not find cash, they stole a pistol and a musical instrument from the Shaikh's house. He, then, examined the foot prints, from which he recognized that one person was from Habashah and two others were free individuals. However he could not recognize the particular persons. We heard that the foot prints were heading to the sea, and that they left the island after theft.

Whereas on this shore, they suspect that the ruler of Umm al-Qaiwain is behind all that, since he claimed that he would attack Abu Musa. Until now it is not known if it was him, or another person. We appointed a few individuals secretly, to investigate this matter. But we heard that on that particular night, the ruler of Umm al-Qaiwain did not sleep all night ... This is a fact. We have told the Agent of Lingah of this theft.

Best wishes

Haji Abu al-Kasem
Residency Agents in Sharjah*

* Our translation. The original text is written in the Arabic language.

Document 5

THIS PASSPORT CONTAINS 32 PAGES. يشتمل هذا الجواز على ٣٢ صفحة.

جواز السفر
PASSPORT

Issued at Ras al-Khaimah صدر في رأس الخيمة

No. of Passport 5843 رقم الجواز ٥٨٤٣

Name of Bearer Mohamed Hassan Abdullah اسم حامل الجواز محمد حسن عبد الله

Accompanied by His wife مصحوبا بـ زوجه

Hana Bint Ahmad Fatimah
and by Children ١ 1/2 Year

National Status جنسية عُمانية

رئيسه المرحوم الشيخ

PASSPORT

RA'S-AL-KHAIMAH
and
Dependencies

جواز السفر
حكومة
رأس الخيمة
وملحقاتها

To all whom it may
Concern: — لكل من يقف على هذا: —
تحية.

Honorable friends, the
Officials of the Great Powers,
and the Representatives of
other Kingdoms abroad, are
requested and requested to
allow the bearer to pass
freely without let or hindrance
and to afford him every
assistance and protection of
which he may stand in need.

وإلى الأصدقاء الكرام
وعلى الدول العظمى وعلى الحكومات
أن يسمحوا لحامل هذا الجواز بمرور
المرور من غير توقف وتسهيل
ويمنحوا الحماية في بيته وبعده
بكل ما يحتاج إليه المساعدة.

Issued by order of the
Ruler of Ra's-al-Khaimah.

في رأس الخيمة بتاريخ ١٨٤٤
من شهر ربيع الثاني سنة ١٣٦٤ 1964

صورة فوتوغرافية لحامل الجواز
Photograph of Bearer

الوصاف
DESCRIPTION

Age 27 Years العمر ٢٧ سنة

Profession Labourer الحرفة عالم

Domicile Ras al-Khaimah الموطن رأس الخيمة

Place and Date of Birth Tumb محل الولادة طنب
1937 وتاريخها ١٩٣٧

Height 5' 5" الطول ٥ قدم ٥
Feet قيراط

Colour of eyes Black لون العين سوداء

Colour of hair Black لون الشعر أسود

Special Peculiarities Nil المميزات الخاصة بعدم

Name of Wife Idama اسم الزوجة هوام

Children Fatimah الاطفال فاطمة

Signature or Thumb Impression of Bearer.

Document 5-a

التجديدات
RENEWALS

1. No. رقم ١
2. No. رقم ٢
3. No. رقم ٣
4. No. رقم ٤
5. No. رقم ٥

Countries for which
this Passport is
valid

الممالك التي يقصد اليها بهذا
الجواز
كل دولة الأقطار العربية
والهند وباكستان وإيران
قطر

The Validity of this
Passport expires on:

18-2-1966

Unless renewed.

يصلى العمل بهذا الجواز في:
١٨/٢/١٩٦٦

صدر في رأس الخيمة
تاريخ ١٨/٢/١٩٦٤

المصادقات
Visas

مديرية الجوازات والحدود
بمكتب
١٧/١٢/٤٤
مصدق
مبا الدخ
١٧/١٢/٤٤

المصادقات
Visas

مديرية الجوازات والحدود
بمكتب
١٧/١٢/٤٤
مصدق
مبا الدخ
١٧/١٢/٤٤
GOVERNMENT OF DUBAI
Dubai, Sharjah
Date 18/2/66
Signature

Document 6

استاذ

الحلوة دامن خبيب

مساجد الخصال الحضرية لاجل الافخ المكين لمدير عامه كاشف الحقائق

محکم بفضل اللہ شہید لائے تھے کمال الانس و بعد فاننی انہم کہ
 بانہناک محلہ تخرید اخل الحوزۃ لاکن مستقلہ بواب
 الشریک فیہا ابن عجمی وھی لہ تخلوا من معادن ولا یکشف علیہا

المهندسون من قبل كما اتنا نهر من طرف جنة رتنا طنب
هل لكم نظر في الكشف على هذا جميع فاذا كان لكم غيرة أفيدوا
حتى نعمل لذلك موضوعاً آخر كما وضعناه للأولى اذ لا نحب
تركها معطلات من العمل ام الكشف فقط محلولة على الموضوع
وقف عليه المهندسون نأمل منكم الجواب ودمكم
الشيخ

Document 6-a

Translation of letter dated the 1st Sha'ban 1354 (28th October 1935) from Shaikh Sultan bin Salim, Ruler of Ras al Khaimah, to E.C.H. Elkington Esquire, General Manager, The D'Arcy Exploration Company.

After Compliments.

I wish to invite your attention to the fact that there are other places within my possessions, which are not independently under me but in partnership with my cousin. These places have some minerals and were not inspected before by the geologists. I also want to invite your attention about my Island Tanb and to ask whether you wish to inspect all these places. Please let me know if you want to do this so that I may make other arrangements as I have done in the first case. I am asking this as I do not want to leave these places without any work, as the inspection is restricted to the place which was seen by the geologists.

I hope to get a reply from you.

Usual Ending.

Document 7-a**TRANSLATION**

From:- Sultan Bin Salem

Dated 4th Sha'ban, 1354
2nd Nov., 1935.

To:- Mr. Elkington,
General Manager,
Exploration Co., Ltd.

No.....

*Should be
72A/7*

We are in receipt of your letter No. 274/7 of 22nd October explaining to us the position which is satisfactory and we hope for still better and more satisfactory a condition in the future.

I have sent you a letter through H.E. the Consul and trust that he has been good enough in despatching same to you. Therein I granted your request.

I now wish to address you in connection with our island ^{Tanab} ~~Tanab~~ and would like to know if the Company wishes to have it surveyed, as it is not free of oil, red clay and other minerals.

I also wish to inform you that there are other places within the area which are not under my independant control but my cousin is a partner thereto. These places are also not free of the said minerals and have not yet been surveyed.

Does the Company wish to have them surveyed or it is satisfied with the places already surveyed by its Engineers?

If you have any idea about this question we should then deal with it separately, as we do not want to leave these places idle.

Kindly let me have your reply, for which I shall be much obliged.

(Sealed & Sultan Bin Salem.

Document 8

72-H/7.

13th November 1935.

The Hon: The Political Resident
in the Persian Gulf,
Bushire.

Sir,

We have the honour to enclose copies of the following
correspondence:-

(1) H.E. the Shaikh of Ras-al-Khaimah's letter
dated 4th Shaban 1354.

(2) Our reply to the above dated 13th November 1935.

As regards the letter referred to by the Shaikh in the
second paragraph of his letter as having been sent to us through
you, we do not appear to have received this letter as yet.

As regards "Tunb" Island, we are not clear as to the
Shaikh's rights, if any, over this Island, and should be much
obliged for your information on this point.

We have the honour to be,
Sir,

Your obedient servant,

For ANGLO-IRANIAN OIL COMPANY LTD.,

Sgd E. H. O. Elkington

GENERAL MANAGER.

Copy to H.B.M. Political Agent, Bahrein,
with enclosures.

Document 9CopyAIR MAIL.

From Abadan GENERAL MANAGEMENT **To** London
Mail Division CONFIDENTIAL (MISCELLANEOUS) **Memo. No.** 34575.
Subject TRUCIAL COAST. **Date** 13th November 1935.
RAS-AL-KHAIMAH.

Further to our Memo. No. 34563 dated 6th November 1935, we enclose copies of Shaikh of Ras-al-Khaimah's letter dated 2nd November 1935 and our reply thereto dated 13th November 1935.

We are not aware of what rights, if any, the Shaikh has over "Tunb" Island, and have asked the Political Resident to advise us on this point. We have also requested Mr. Williamson to point out to the Shaikh that our option covers all his territories.

We have been informed by our Bahrein Agent that the Shaikh of Ras-al-Khaimah has asked if our option payment can be paid to him in two yearly instalments in advance, i.e. Rs.9000/- now and Rs.9000/- on 1st August 1936. We have requested our Bahrein Agent to advise the Shaikh to refer the matter to us direct, and expect to hear from him in due course. We feel, however, that it would be advisable to agree to the Shaikh's request, and shall be glad to receive your permission to do so.

Sgd. E. H. O. Elkington

Encls.

Document 10Confidential.

No. 877-S of 1935.

British Residency and Consulate-General,

Bushire, the 16th November 1935.

Ras al Khaimah Oil Agreement.

Dear Sir,

I enclose a copy of a letter No. 515/10/10, dated the 31st October 1935, from the Political Agent, Bahrain, together with the original (and translation) of the Shaikh of Ras al Khaimah's letter referred to.

2. With regard to Colonel Loch's paragraph 4(a). It is not quite clear what territories the Shaikh of Ras al Khaimah states that he holds in partnership with his cousin, i.e. the Shaikh of Kalba, presumably Kalba itself. As I understand it, in the latter territory the Company do not want any concession, but in any case, no overtures should be made to the Shaikh of Kalba, either direct or through the Shaikh of Ras al Khaimah, and no geologists should visit that area, without reference to me.

3. With regard to Colonel Loch's paragraph 4(b). Tanb is definitely within the territories of Ras al Khaimah, and therefore falls within the Company's option, vide the Shaikh's letter dated 29th Rabi II 1354, to the D'Arcy Exploration Company. Colonel Loch has since informed me that he was unable to clear up this point with Haji Williamson at Abu Dhabi.

I am sending a copy of this letter to the Political Agent, Bahrain.

Yours faithfully,

T. C. Loch
Lieut-Colonel,
Political Resident in the Persian Gulf

Document 11

2nd December, 1935.

H. E. Shaikh Sultan ibn Salim,
Ruler of Ras-al-Khaimah.

Your Excellency,

Further to our letter No.
72-H/7 dated the 13th November, we
have the honour to inform you that as
regards your Island of "Tunb", we
should expect to prospect there if it
was deemed necessary, as being in your
territory it is covered by the terms
of our option.

Assuring you of our high
esteem,

Yours faithfully,
For D'ARCY EXPLORATION COMPANY, LTD.,

Sgd E. H. O. Elkington
GENERAL MANAGER.

Document 12



حكومة رأس الخيمة

دائرة الجوازات

(ثمن الاسنارة ريال واحد)

طلب جواز سفر

يوسف إبراهيم يوسف

اسم الطالب بالكامل :

اللقب او الكنية او التعرقة :

مكان الولادة :

تاريخ الولادة :

المهنة او الحرفة :

مكان الاقامة الدائم (الموطن الاول)

مكان الاقامة المؤقت (الموطن الثاني)

الحالة الاجتماعية (اعزب / متزوج)

طبيب
١٩٤١

طالب علم

طبيب

متزوج

العنوان الذي يمكن الاتصال به بسهولة (داخل الامارة و خارجها)

طبيب

اسباب طلب جواز السفر والممالك التي يرغب في السفر اليها .
لأجل ان كانت هناك رغبة في السفر الى الهند وباكستان وإيران فقط .

في حالة المتزوج

اسم الزوجية :

تاريخ الميلاد (او السن) :

اسماء الاولاد و اعمارهم (٢) :

يوسف بن عبد الله
١٩٢٥

اسم وتوقيع مقدم الطلب

تاريخ تقديم الطلب ٨ / ١١ / ١٩٦٧

مرفقات ضرورية

يوسف إبراهيم يوسف

١ - صورتين فوتوغرافيتين لطالب الجواز .

٢ - بطاقة تحقيق شخصية .

٣ - شهادة حسن السير والسلوك .

ملاحظات :

١ - في حالة عدم وجود شهادة ميلاد يقدم شهادة تسنين من الطبيب .

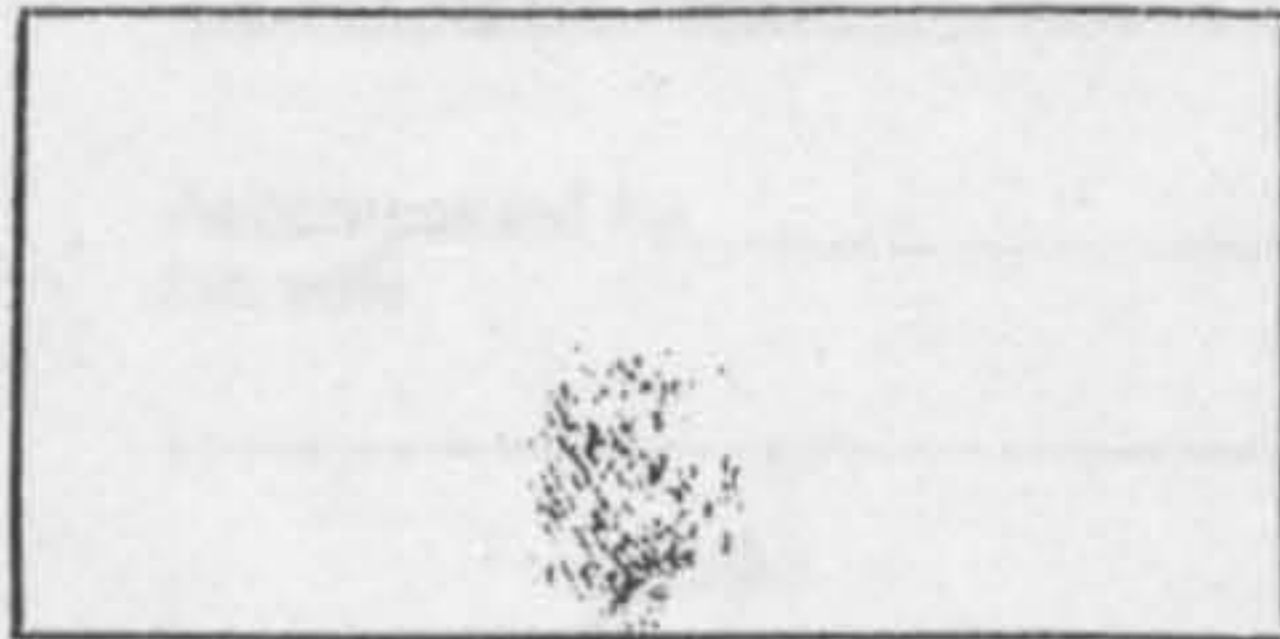
٢ - حالة الرغبة في ضم الاولاد في جواز السفر المطلوب يذكر اسمائهم و اعمارهم مع شهادات الميلاد الخاصة بهم .

(بشرط ان يكونوا قصر)

Document 12-a

هذه البيانات خاصة بدائرة الجوازاتالعلامات المميزة:

الطول : ٥٢ سم
 لون العين : بندق
 لون الشعر : خنط
 المميزات الخاصة : رسم العمل ليس
 الابهام الايسر



بصمة الطالب

توقيع الكاتب المسئول
رأى الدائرة

لم يحل راجعة اتيان الشخية

ولم يقدم طيب للحصول عليها

حاكم راس الخيمة وملحقاتها

المدير

Document 13

This passport contains 72 pages ٧٢ صفحة يشتمل هذا الجواز على

جواز السفر
PASSPORT

Issued at Ras al Khaima صدر في رأس الخيمة

No. of Passport B 1897 ١٨٩٧ رقم الجواز ب

Name of Bearer Mohamed Ali Mohamed اسم حامل الجواز محمد علي محمد

Accompanied by his wife مصحوبا بزوجته
his wife

{ اطفال } { وب }
{ and by } { Children }

National Status Omanian الجنسية عُمانية

مستغنى

PASSPORT

RAS AL KHAIMAH
and
Dependencies

جواز السفر
حكومة
رأس الخيمة
وملحقاتها

To all whom it may concern :-

Greeting.

Honourable friends, the Officials of the Great Powers, and the Representatives of other Kingdoms abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.

نود ونرجو من الاصدقاء الكرام رجال الدول العظام وممثلي الحكومات أن يسمحوا لحامل هذا الجواز بحرية المرور من غير تعويق وتأخير، وييسلوا الصعوبات في سبيله ويراعوه بكل ما يحتاج اليه من المساعدة.

Issued by order of the Ruler of Ras al Khaimah.

صدر بأمر حاكم رأس الخيمة

Given at Ras al Khaima في رأس الخيمة تاريخ ١٥

من جميع الدول سنة ١٣٨٥ 14 JULY 1965

صورة فتو غرافية حامل الجواز
Photograph of Bearer.

المهنة Labourer الحرفة عامل

Place and date of birth Tunisi محل الولادة (طنجة) وقاربينها ١٩٢٢

Domicile Ras al Khaima الموطن رأس الخيمة

Height 5 Ft. 5 In. الطول ٥ قدم ٥ قديم

Colour of eyes Black لون العين سوداوية

Colour of hair single لون الشعر فليط

Special Peculiarities Nil المميزات الخاصة برونه

Name of Wife _____ الزوجة

Place and date of birth _____ محل وتاريخ الولادة

Children _____ الأطفال

Name _____ Place and date of birth _____ الاسم محل وتاريخ الولادة الجنس

مستغنى

Signature or Thumb Impression of Bearer.

التجديدات
RENEWALS.

1979/1/13 to 1979/1/13
Renewed 14-2-1967 Until 14-2-1969.

1. No. 9v1/v/1425 1979/v/1425
Renewed 14-7-1969 Until 14-7-1971.

2. No. نامہ 2151 رقم ۲
جدد ۱۹۷۱/۷/۱۴ لغایہ ۱۹۷۳/۷/۱۴
۱۴-7-1971 ۱۴-7-
 3. No. 1973

4. No. _____ رقم _____

الممالك التي يقصد اليها بهذا
الجواز

All Arab Countries كافة الأقطار العربية

India Pakistan & Iran الهند و پاکستان و ایران

Only _____ فقط _____

ينتهي العمل بهذا الجواز في :

14 July 1967 - 14 July 1967

Unless renewed. إلا إذا جدد

Issued at Bas al Khaima صدر في البحرين

Dated 14th JULY. 1965 - تاریخ ۱۴ جولائی ۱۹۶۵

Visas.

DEPT. OF N. PASSPORTS & RESD.
KUWAIT PORT

Exit خروج

PASSPORT OFFICER ضابط الجوازات

GOVERNMENT OF DUBAI
PASSPORT CONTROL
28-8-65
SIGNATURE

المصادقات

Visas.

حكومة دبي
GOVERNMENT OF DUBAI

Dubai Seaport دبیہا . دبیہا

Exit—8/1/20. 100

Signature _____

مل حاكمه من اهل البيت الخفية والجوازات
و زكاة خلال ٨ - ١٠

WALDEN SUTHERLAND TO H. PAGE. A 121
DEPT. WITHIN 43 HOURS OF ARRIVAL

أقاربه الجنبية والذين

TS - RESD.

دخول

POST OFFICER مطابق الحوازين

[Handwritten signature]

11/11/11

مجله بتاریخ

Document 14

This passport contains 72 pages يشتمل هذا الجواز على ٧٢ صفحة

جواز السفر

PASSPORT

Issued at RAS AL KHAIMAH صدر في رأس الخيمة

No. of Passport B 4792 ٤٧٩٢ رقم الجواز ب

Name of Bearer محمد محمود اسم حامل الجواز

MOHAMMED MAHMOOD

Accompanied by مصوبيا بزوجته كتم احمد محمد his wife

Kaltham Ahmed Mohid.

{ اطفال } { وب ٢ }
{ and by ٢ } { Children }

National Status OMANIAN الجنسية عُماني

PASSPORT

RAS AL KHAIMAH
and
Dependencies



جواز السفر
حكومة
رأس الخيمة
وملحقاتها

To all whom it may concern:— لكل من يقف على هذا:

Greeting.

Honourable friends, the Officials of the Great Powers, and the Representatives of other Kingdoms abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.

نود ونرجو من الاسماء الكرام رجال الدول العظام وممثلي الحكومات أن يسمحوا لحامل هذا الجواز بحرية المرور من غير تمويق وتأخير، ويسهلوا الصعوبات في سبيله وبراءه بكل ما يحتاج اليه من المساعدة.

Issued by صدر بالمرحوم of the Ruler of Ras al Khaimah.

Given at RAS AL KHAIMAH تاريخ في رأس الخيمة

the 22 FEB. 1967 من ذي القعدة ١٣٨٦

صورة فتو غرافية لحامل الجواز
Photograph of Bearer.



امضاء أو نقش ابهام حامل الجواز
Signature or Thumb Impression of Bearer.

Profession SAILOR المحرفة بحار

Place and date of birth TUNE 1929 محل الولادة (طنب) وتاريخها ١٩٢٩

Domicile RAS AL KHAIMAH الوطن رأس الخيمة

Height 5 Ft. 5 In. الطول ٥ قدم ٥ قيراط

Colour of eyes BROWN لون العين بني

Colour of hair BLACK لون الشعر اسود

Special Peculiarities NIL المميزات الخاصة بدون

Name of Wife Kaltham الزوجة كتم

Place and date of birth Tune 1933 محل وتاريخ الولادة (طنب) ١٩٣٣

Children 1933-1934 الاطفال

Name Place and date of birth الجنس الاسم محل وتاريخ الولادة
Aki Tune 1961 ١٩٦١ ذكر
Reha Tune 1963 ١٩٦٣ أنثى

Document 14-a

التجديدات RENEWALS.		الممالك التي يقصد إليها بهذا الجواز Countries for which this Passport is valid	
1. No. <u>رقم ١</u>	جدد ١٢/٢٢/١٩٦٩ لسنة ١٩٧١ Renewed 22-2-1969 Until 22-2-1971	All Arab Countries	كلية الأقطار العربية
2. No. <u>رقم ٢</u>	جدد ١٢/٢٢/١٩٧١ لسنة ١٩٧٣ Renewed 22-2-1971 Until 22-2-1973	India Pakistan & Iran	الهند وباكستان وإيران
3. No. <u>رقم ٣</u>	جدد ١٢/٢٢/١٩٧٣ لسنة ١٩٧٥ Renewed 22-2-1973 Until 22-2-1975	Only	فقط
4. No. <u>رقم ٤</u>		The Validity of this Passport expires : 22-FEB-1969 ٢٢ فبراير ١٩٦٩ Unless renewed. إلا إذا جدد	
		Issued at <u>RAS AL KHAIMA</u> صدر في رأس الخيمة Dated 22-FEB-1967 تاريخ ٢٢ فبراير ١٩٦٧	

المصادقات Visas.		المصادقات Visas.	
<p>BEARER ALONE VISA NO: 890 Seen at the POLITICAL AGENCY, BAHRAIN Good for a single journey TO <u>INDIA</u> Within <u>SIX</u> months of date hereof if passport remains valid. <u>K. W. Raghavan</u> For Political Agent Date <u>6 FEB 1968</u></p> <p>VALID FOR A STAY OF ONE MONTH ONLY</p>		<p>BEARER ALONE VISA NO: 1537 Seen at the POLITICAL AGENCY, BAHRAIN Good for a single journey TO <u>INDIA</u> Within <u>SIX</u> months of date hereof if passport remains valid. <u>K. W. Raghavan</u> For Political Agent Date <u>26 FEB 1967</u></p> <p>Valid for a stay of one month only.</p>	

Document 15

This passport contains 72 pages ٧٢ صفحة

جواز السفر

PASSPORT

Issued at RAS-AL-KHAIMA صدر في رأس الخيمة

No. of Passport B 4794 ٤٧٩٤ رقم الجواز ب

Name of Bearer MUHAMMED ALI اسم حامل الجواز علي محمد

Accompanied by his wife مصحوبا بزوجته

{ اطفال } { وب }
{ and by } { Children }

National Status OMANIAN الجنسية عُماني

بسم الله الرحمن الرحيم
جواز السفر
PASSPORT
RAS AL KHAIMA
and
Dependencies
حكومة
رأس الخيمة
وملحقاتها

To all whom it may concern :—
Greeting.

Honourable friends, the Officials of the Great Powers, and the Representatives of other Kingdoms abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.

Issued by order of the Ruler of Ras al Khaima صدر بأمر حاكم رأس الخيمة

Given at RAS-AL-KHAIMA تاريخ في رأس الخيمة

the 22. ND. FEB 1967 من ذي القعدة سنة ١٣٨٦

صورة فتو غرافية لحامل الجواز
Photograph of Bearer.



امضاء أو نقش ابهام حامل الجواز
Signature or Thumb Impression of Bearer.



المهنة SAILOR بحار

Place and date of birth TUNB ١٩٢١ محل الولادة (جزيرة طنب) وتاريخها

Domicile RAS-AL-KHAIMA الوطن رأس الخيمة

Height - 5 Ft. قيراط الطول

Colour of eyes BROWN لون العينين بني

Colour of hair BLACK لون الشعر أسود

Special Peculiarities WIL المميزات الخاصة بدون

Name of Wife الزوجة

Place and date of birth محل وتاريخ الولادة

Children الأطفال

Name Place and date of birth الاسم محل وتاريخ الولادة الجنس

Document 15-a

التجديدات RENEWALS.		الممالك التي يقصد اليها بهذا الجواز Countries for which this Passport is valid	
1. No. <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	١. رقم <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	All Arab Countries	كافة الأقطار العربية
2. No. <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	٢. رقم <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	India Pakistan & Iran	الهند وباكستان وإيران
3. No. <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	٣. رقم <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	Only	نقط
4. No. <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	٤. رقم <u>١٩٧١/٢٤٤٤</u> <u>١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u> <u>٢٢-٢-١٩٦٩</u>	The Validity of this Passport expires :	ينتهي العمل بهذا الجواز في :
		22. ND. FEB. 1969	٢٢ فبراير ١٩٦٩
		Unless renewed.	إلا إذا جدد
		Issued at <u>RAS. AL-KHAIMA</u>	صدر في رأس الخيمة
		Dated <u>22. ND. FEB. 1967</u>	تاريخ ٢٢ فبراير ١٩٦٧

المصادقات Visas.		المصادقات Visas.	
BEARER ALONE VISA NO: 889 Seen at the POLITICAL AGENCY, BAHRAIN Good for a single journey TO <u>INDIA</u> Within <u>5/1</u> months of date hereof if passport remains valid. For Political Agent Date <u>26 FEB 1968</u>		BEARER ALONE VISA NO: 1539 Seen at the POLITICAL AGENCY, BAHRAIN Good for a single journey TO <u>INDIA</u> Within <u>5/1</u> months of date hereof if passport remains valid. For Political Agent Date <u>26 FEB 1968</u>	
VALID FOR A STAY OF ONE MONTH ONLY		Valid for a stay of one month only	

Document 15-b

<p>١١</p> <p>المصادقات</p> <p>Visas.</p> <p><i>Bearer alone</i></p> <div data-bbox="445 604 964 1037"> <p>VISA NO: 708</p> <p>Seen at the POLITICAL AGENCY, BAHRAIN</p> <p>Good for a single journey TO <i>INDIA</i></p> <p>Within <i>SIX MONTHS</i> of date hereof if passport remains valid.</p> <p><i>K. K. K. K.</i> Political Agent</p> <p>Date <i>2-2-69</i></p> </div> <p>Stay not to exceed three months only</p> <div data-bbox="429 1190 643 1419"> </div> <div data-bbox="735 1175 1042 1480"> </div>	<p>١٠</p> <p>المصادقات</p> <p>Visas.</p> <p><i>Bearer alone</i></p> <div data-bbox="1216 625 1737 1083"> <p>VISA NO: 1263</p> <p>Seen at the POLITICAL AGENCY, BAHRAIN</p> <p>Good for a single journey TO <i>INDIA</i></p> <p>Within <i>SIX MONTHS</i> of date hereof if passport remains valid.</p> <p><i>K. K. K. K.</i> Political Agent</p> <p>Date <i>25-2-69</i></p> </div> <p>STAY NOT TO EXCEED THREE MONTHS ONLY</p> <div data-bbox="1287 1236 1502 1464"> </div> <div data-bbox="1543 1190 1829 1464"> </div>
<p>١٥</p> <p>المصادقات</p> <p>Visas. <i>Bearer Alone.</i></p> <div data-bbox="500 1815 909 2334"> <p>No. CON2972</p> <p><input checked="" type="checkbox"/> Tourist Visa</p> <p>Date of issue <i>-8 JAN 1972</i></p> <p>Date of expiry <i>-7 APRIL 1972</i></p> <p>Good for <i>SINGLE</i> journey if passport remains valid.</p> <p>Period of stay in India <i>(3)</i> <i>THREE MONTHS</i></p> <p><i>S. N. SHARMA</i> Charge d' Affaires Embassy of India, Bahrain</p> </div> <div data-bbox="327 2395 643 2731"> </div>	<p>١٤</p> <p>المصادقات</p> <p>Visas.</p>

Document 16

بسم الله الرحمن الرحيم

جواز سفر

ONE YEAR
PASSPORT

GOVERNMENT OF SHARJAH
AND ITS DEPENDENCIES

It will replace all other permits.

Granting

Honorable friends, the Officials of the Great Powers, and the Representatives of other Countries abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.

Issued by order of His Highness the Ruler of Sharjah and its Dependencies

Given at Sharjah

at the Aug. 11

1971

بسم الله الرحمن الرحيم

جواز سفر

ONE YEAR
PASSPORT

GOVERNMENT OF SHARJAH
AND ITS DEPENDENCIES

It will replace all other permits.

Granting


Honorable friends, the Officials of the Great Powers, and the Representatives of other Countries abroad, are required and requested to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need.

Issued by order of His Highness the Ruler of Sharjah and its Dependencies

Given at Sharjah

at the Aug. 11

1971



٢

DESCRIPTION

THE BEARER

Profession Student

Place of Birth Al-Musa Island

Date of Birth 1956

Domicile Al-Musa Island

Height 1.65 m. 1.65 m.

Colour of Eyes Blue

Colour of Hair Black

Special Particularities None

THE WIFE

Profession Student

Place of Birth Al-Musa Island

Date of Birth 1956

Domicile Al-Musa Island

Height 1.65 m. 1.65 m.


Colour of Eyes Blue

Colour of Hair Black

Special Particularities None

CHILDREN

Names	Sex	Date of Birth



٢

أوصاف

الزوجة

المهنة طالبة

محل الميلاد جزيرة أم موسى

تاريخ الميلاد 1956

الموطن جزيرة أم موسى

الطول 1.65 م. 1.65 م.

لون العين أزرق

لون الشعر أسود

الميزات الخاصة لا شيء

حامل الجواز

المهنة طالبة

محل الميلاد جزيرة أم موسى

تاريخ الميلاد 1956

الموطن جزيرة أم موسى

الطول 1.65 م. 1.65 م.

لون العين أزرق

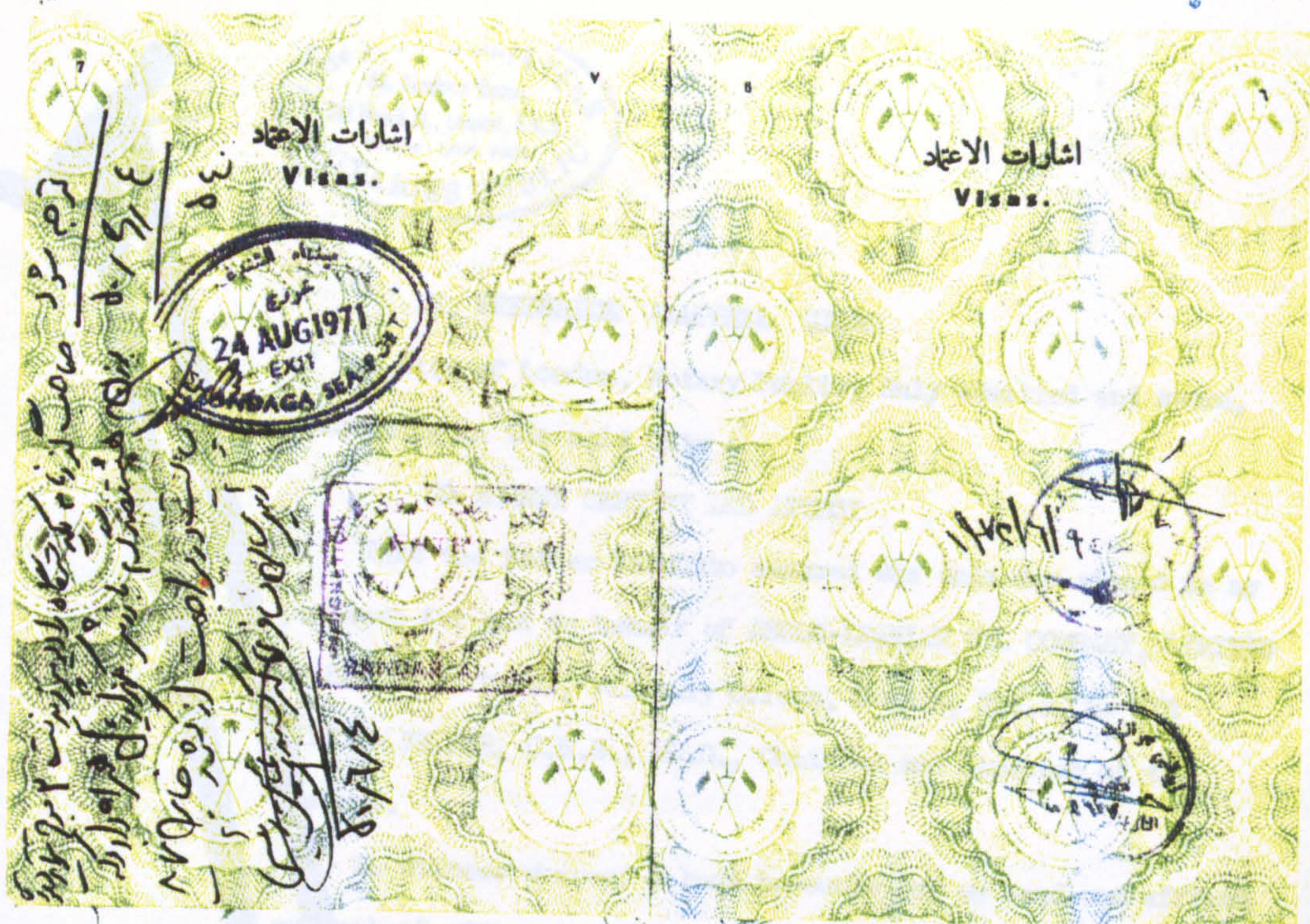
لون الشعر أسود

الميزات الخاصة لا شيء

الأطفال

الاسم	النوع	تاريخ الميلاد

Document 16-a

TranslationNotice

The bearer of this passport will carry a Transistor Radio 2 Wave Lengths, Weighs 800 g, costs 1000 Iranian Riyals . Upon check-in or out he should face no difficulties and must not be interrogated .

Superintendent of Custom Hall Bandar Abbas Customs & Excise
Mr. Abbas Reysi
25/8/71

Check-out

The bearer of this passport has left Kanarek Port to Dubai

Depute superintendent Kanarek Police
Staff sergeant : Iffat Tub
8/9/71

Document 17



I, FREDERICK CAMPBELL GILES
of the City of London, Notary Public, duly admitted and sworn,
practising in the said City

DO HEREBY CERTIFY AND ATTEST

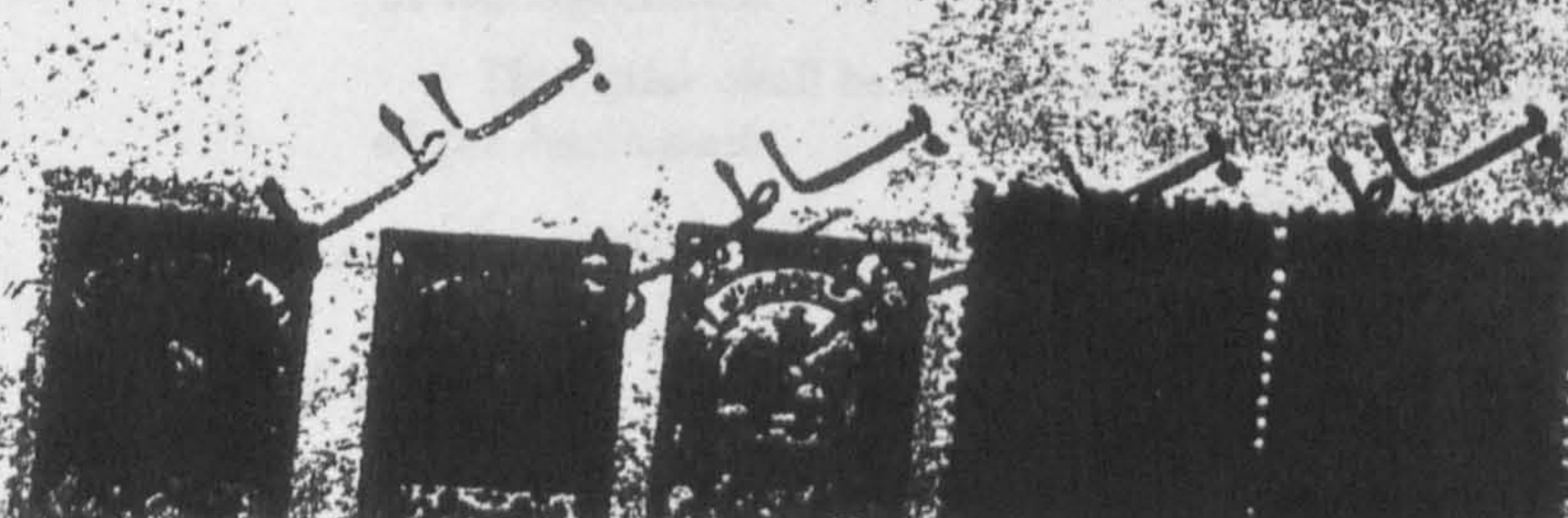
That the letter hereunto annexed was this day signed in my
presence for and on behalf of ANGLO-IRANIAN OIL COMPANY, LIMITED
of Britannic House, Finsbury Circus, London, E.C.2. by SIR
WILLIAM FRASER, C.B.E., LL.D., Chairman and Director of the
company.

In witness whereof I have hereunto set my hand and affixed
my seal of office in the City of London aforesaid this twentieth
day of September One thousand nine hundred and fifty-four.

NOTARY PUBLIC
LONDON

۲۱۹۰ Original

۱۳۳۲/۹/۲۰
در این روز و تاریخ در این مکان و در این شهر
و این کشور و این دولت و این امپراتوری
و این سرزمین و این قلمرو و این مملکت
و این سرای و این دیار و این ملک و این دولت
و این سرزمین و این قلمرو و این مملکت
و این سرای و این دیار و این ملک و این دولت



Document 17-a

Geneva, 19 September 1954
De Hoofdinspecteur der Registratie en-Overname.

To: MINISTRY OF FINANCE,
ATTENTION: MINISTER OF FINANCE
and
NATIONAL IRANIAN OIL COMPANY.

Copy to: IRAANSE AARDOLIE EXPLORATIE EN PRODUCTIE
MAATSCHAPPIJ
(Iranian Oil Exploration and Producing Company)
N.V.

GENTLEMEN,

Islands

In view of the expressed desire of the Government of Iran to improve, as far as possible, the economic status of the islands in the Persian Gulf under Iranian Sovereignty, and named in Schedule I of the Agreement between Iran, NIOC and the Consortium members, the Consortium members undertake to

- (a) Either commence exploration work for oil or gas on at least one island in each of the three groups designated below within seven years of the Effective Date, or exclude and release from the Area of the Agreement any such group of islands in which exploration work has not so commenced.
- (b) Either discover oil or gas on at least one island in each of such groups within fifteen years of the Effective Date, or exclude and release from the Area of the Agreement any such group in which oil or gas has not been so discovered.
- (c) Either produce on each of such islands oil or gas for shipment therefrom by the end of the twenty-third year from the Effective Date, or exclude from the Area of any continuation of the Agreement under Section B of Article 49 any such island from which oil or gas has not been so produced.

For the purposes of this letter the groups of islands referred to above shall consist of

Group 1—Qishm, Hengam and Hormuz

Group 2—Hindurabi, Qais and Shu Aib

Group 3—Kharg and Khargu

and each group shall include the area lying within a line three miles offshore from the lowest tide line of each of such islands in that group.

The obligations undertaken by this letter shall be performed through the Exploration and Producing Company and shall be subject to the provisions of the Agreement as if this letter were itself a part of the Agreement.

This letter shall be deemed to be dated as of the Effective Date of the Agreement.

Yours faithfully,

N.V. DE BATAAFSCHE PETROLEUM MAATSCHAPPIJ For ANGLO-IRANIAN OIL CO., LTD.

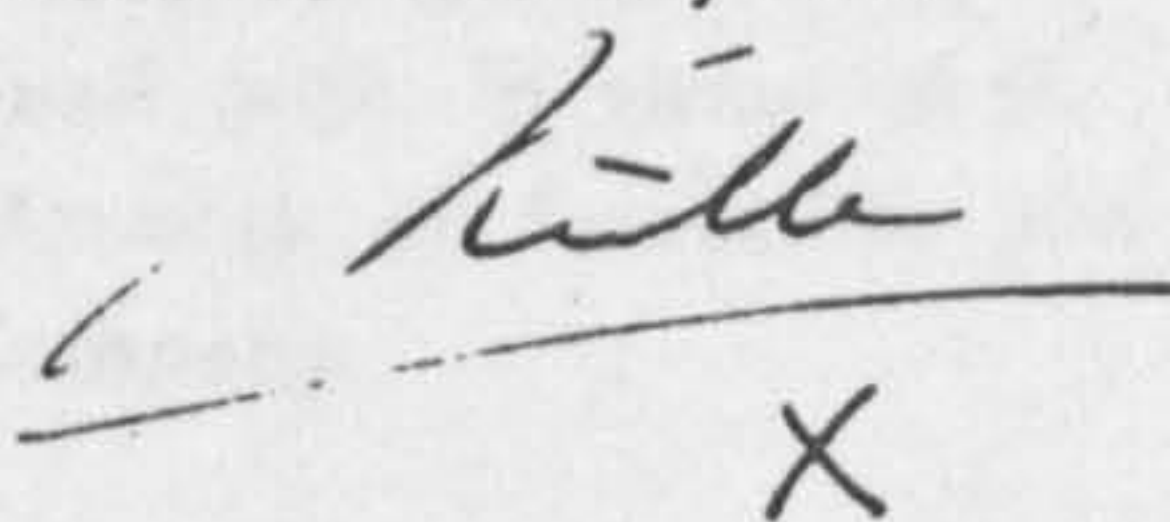
[Handwritten signatures]

Document 17-b

Johan Willem Thomas KÜLLER, Notary at The Hague, hereby certify
 that the above signatures are those of
 J. H. LOUDON, Managing Director and
 L. SCHEPERS, Managing Director

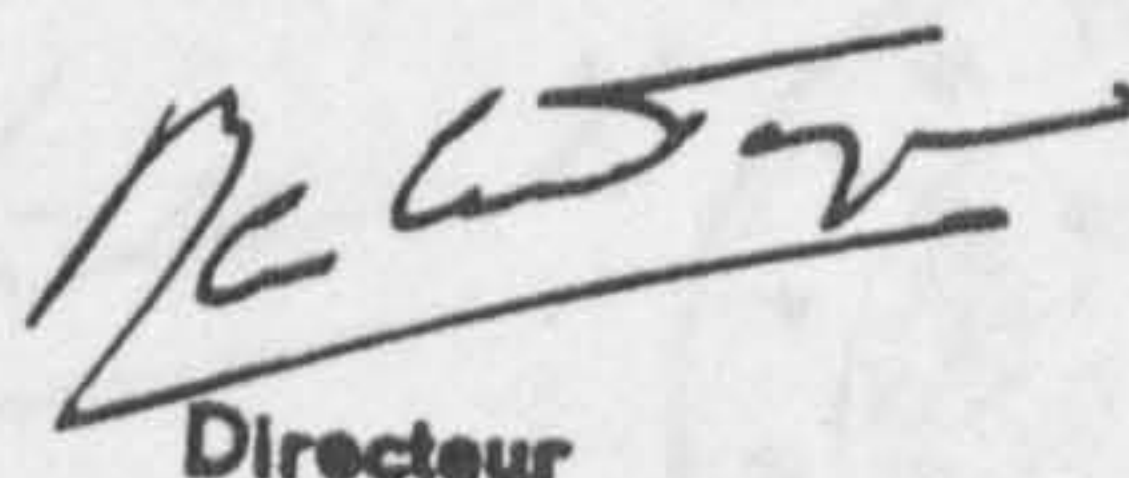
..... of
 De Bataafsche Petroleum Maatschappij, a Company organized and
 existing under the laws of The Netherlands, that the said persons have
 signed this document in my presence at The Hague on the date mentioned
 below and that in virtue of article 10 of that Company's Articles of Asso-
 ciation ("Statuten") the above signatures are binding upon the said Company.

The Hague, this NINETEEN day of SEPTEMBER,
 nineteen hundred and fifty-four.


 X

For and on behalf of
 COMPAGNIE FRANÇAISE DES PETROLES




 Directeur

I Johan Willem Thomas KÜLLER, Notary at The Hague, hereby certify
 that the person having signed for and on behalf of Compagnie Française
 des Pétroles is

Mr R. T. de MONTAIGU

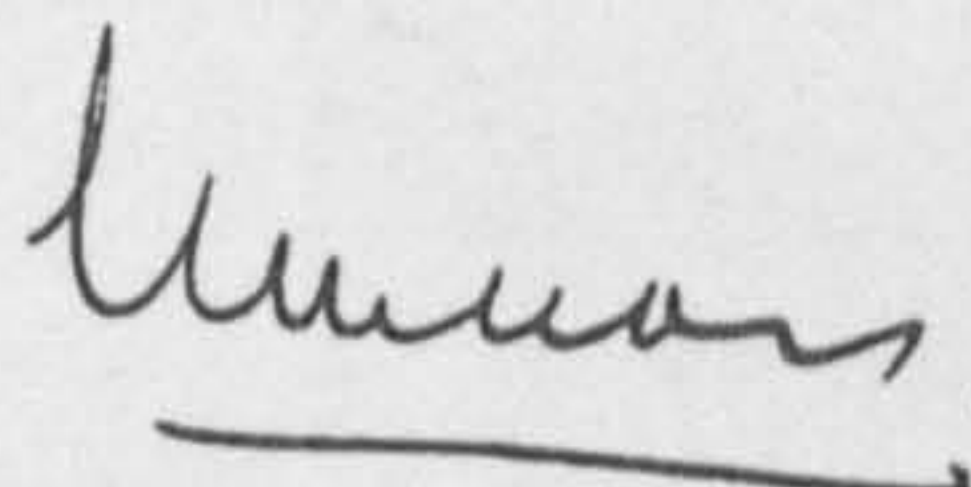
and that this document has been signed by the said person in my presence
 at The Hague on the date mentioned below.

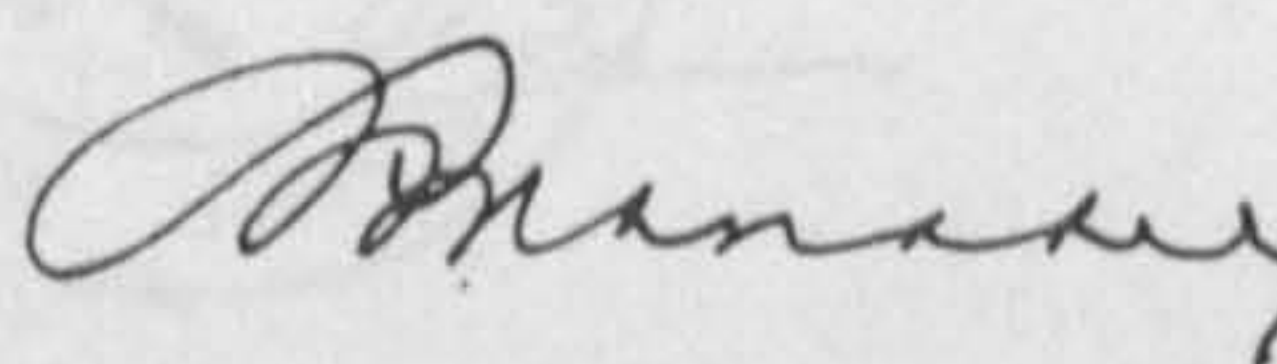
The Hague, this NINETEENTH day of SEPTEMBER,
 nineteen hundred and fifty-four


 X



IRAANSE AARDOLIE EXPLORATIE EN PRODUCTIE MAATSCHAPPIJ
 (Iranian Oil Exploration and Producing Company) N.V.





Document 17-c

I, Johan Willem Thomas KÜLLER, Notary at The Hague, certify that the above signatures are those of Mr. C. P. C. Wijckerheld Bisdon and Mr. _____, Chairman and member respectively of the Board of Directors of the Iraanse Aardolie Exploratie en Productie Maatschappij (Iranian Oil Exploration and Producing Company) N.V., a Company organized and existing under the laws of The Netherlands and that the said persons have signed this document in my presence at The Hague on the date mentioned below. I further certify that there have been shown to me the Minutes of the General Meeting of Shareholders of the said Company held on 25th August, 1954, at which meeting it was unanimously resolved that an agreement or agreements as referred to in article 2, paragraph 1 of the Articles of Association ("Statuten") of the said Company be signed by the persons entitled to represent the Company, that the said resolution is valid and that in accordance with article 10, paragraph 4 of the Company's Articles of Association the said Minutes have been signed by the Chairman of the meeting as well as by all the persons representing both the shareholders, the latter persons only having signed in view of the importance of the matter dealt with. In virtue of that resolution and of article 9 of the Company's Articles of Association the above signatures are binding upon the said Company.

The Hague, this NINETEENTH day of SEPTEMBER,
nineteen hundred and fifty-four.

[Signature]



Lahaye le	19-9-1954	۱۳۳۳/۹/۲۸	لایحه تاریخ
Numéro	125	۱۲۵	شماره
Vue pour la légalisation		مختص استامبر انجمن کلمه	
de l'agent <i>[Signature]</i> Mr. Küller		که در حضور علامت (X) گذارد	
Consul de l'Iran		شده تصدیق میشود	



[Signature]

Document 17-d

AT THE CITY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA

THIS 20th DAY OF SEPTEMBER, 1954

GULF OIL CORPORATION

ATTEST:

James O'Brien

Secretary

BY

L. A. Burns

Chairman of the Board

AT THE CITY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA

THIS 20th DAY OF SEPTEMBER, 1954

SOCIETY V. CULLEN OIL COMPANY, INCORPORATED

ATTEST:

W. H. K. [illegible]

Secretary

BY

M. J. [illegible]

President

AT THE CITY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA

SEPTEMBER, 1954

STANDARD OIL COMPANY

ATTEST:

[illegible]

Secretary

BY

Eugene Holman

Chairman of the Board

AT THE CITY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA

THIS 20th DAY OF SEPTEMBER, 1954

STANDARD OIL COMPANY OF CALIFORNIA

ATTEST:

R. F. Hannan

Asst. Secretary

BY

[illegible]

Chairman of the Board

AT THE CITY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA

THIS 20th DAY OF SEPTEMBER, 1954

TRINAC COMPANY

ATTEST:

[illegible]

Secretary

BY

[illegible]

Chairman of the Board

Document 17-e

STATE OF NEW YORK)
 : ss
COUNTY OF NEW YORK)

On the 20th day of September, nineteen hundred and fifty-four before me personally came each of the individuals named below, to me known, who, being by me each duly sworn, did each depose and say: That he resides in the place set forth after his name; that he holds the office set forth after his name, in the corporation likewise set forth after his name, being one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority or order of the Board of Directors of said corporation, and that he signed his name thereto by like authority or order.

NAME	RESIDENCE	OFFICE	COMPANY
S. A. Swensrud	Park Mansions Pittsburgh, Pennsylvania	Chairman of the Board	GULF OIL CORPORATION
B. B. Jennings	Olen Head Long Island, New York	President	SOCOMY-VACUUM OIL COMPANY, INCORPORATED
Eugene Halman	2 East 67th Street New York City, New York	Chairman of the Board	STANDARD OIL COMPANY
R. G. Fallis	3690 Washington Street San Francisco, California	Chairman of the Board	STANDARD OIL COMPANY OF CALIFORNIA
J. S. Leach	2207 River Oaks Blvd. Houston, Texas	Chairman of the Board	THE TEXAS COMPANY

George A. Scholze

GEORGE A. SCHOLZE
NOTARY PUBLIC, STATE OF NEW YORK
Residing in Nassau County
Nassau County Clerk's No. 30-3526250
Certificates filed in
N. Y. Co. Clk's and Register's Office
Commission Expires March 30, 1955

State of New York, }
County of New York, } ss:

No. 35023

Form 1

I, ARCHIBALD R. WATSON, County Clerk and Clerk of the Supreme Court, New York County, a Court of Record having by law a seal, DO HEREBY CERTIFY that

GEORGE A. SCHOLZE

whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York; that pursuant to law a commission, or a certificate of his official character, and his autograph signature, have been filed in my office; that as such Notary Public he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to receive and certify the acknowledgment or proof of deeds, mortgages, powers of attorney and other written instruments for lands, tenements and hereditaments to be read in evidence or recorded in this State, to protest notes and to take and certify affidavits and depositions; and that I am well acquainted with the handwriting of such Notary Public, or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and believe that the signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal

this _____ day of _____ 1954

FEE PAID 25¢
50¢

Archibald R. Watson
County Clerk and Clerk of the Supreme Court, New York County

Handwritten Persian text and stamps at the bottom of the document, including a circular seal of the Consulate General of the United States in New York and two rectangular stamps.

Document 18

UNITED
NATIONS

S



Security Council

Distr.
GENERALS/1996/693
26 August 1996
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 26 AUGUST 1996 FROM THE PERMANENT REPRESENTATIVE
OF THE UNITED ARAB EMIRATES TO THE UNITED NATIONS ADDRESSED
TO THE PRESIDENT OF THE SECURITY COUNCIL

With reference to document S/1996/603, concerning the simplification of the list of matters of which the Security Council is seized (rule 11 of the provisional rules of procedure of the Security Council), and on instructions from my Government, I have the honour to inform you of the following:

The United Arab Emirates objects to the procedures set forth in document S/1996/603 for the removal from the list of matters of which the Council is seized of matters that have not been considered by the Council and to the deletion of the item listed in the annex to the document as No. 16, which is entitled "Letter dated 3 December 1971 from the Permanent Representatives of Algeria, Iraq, the Libyan Arab Jamahiriya and the People's Democratic Republic of Yemen to the United Nations addressed to the President of the Security Council" and which relates to the question of the Iranian occupation of the Greater Tunb, the Lesser Tunb and Abu Musa, three islands belonging to the United Arab Emirates.

Until such time as the Islamic Republic of Iran terminates its illegal occupation of the Greater Tunb, the Lesser Tunb and Abu Musa and the United Arab Emirates regains de facto control of the three islands, my Government requests the Security Council to retain in the list of matters of which it is seized the item relating to the question of the islands and listed as No. 16 in the annex to document S/1996/603. The reasons for this are as follows:

(a) The continued illegal occupation by the Islamic Republic of Iran of the Lesser Tunb and the Greater Tunb is in violation of the Charter of the United Nations and the principles of international law.

(b) The Islamic Republic of Iran has not ceased to violate the memorandum of understanding of November 1971 through the measures it has taken and is continuing to take on Abu Musa with a view to imposing its control over the island and forcibly annexing it to Iranian sovereignty.

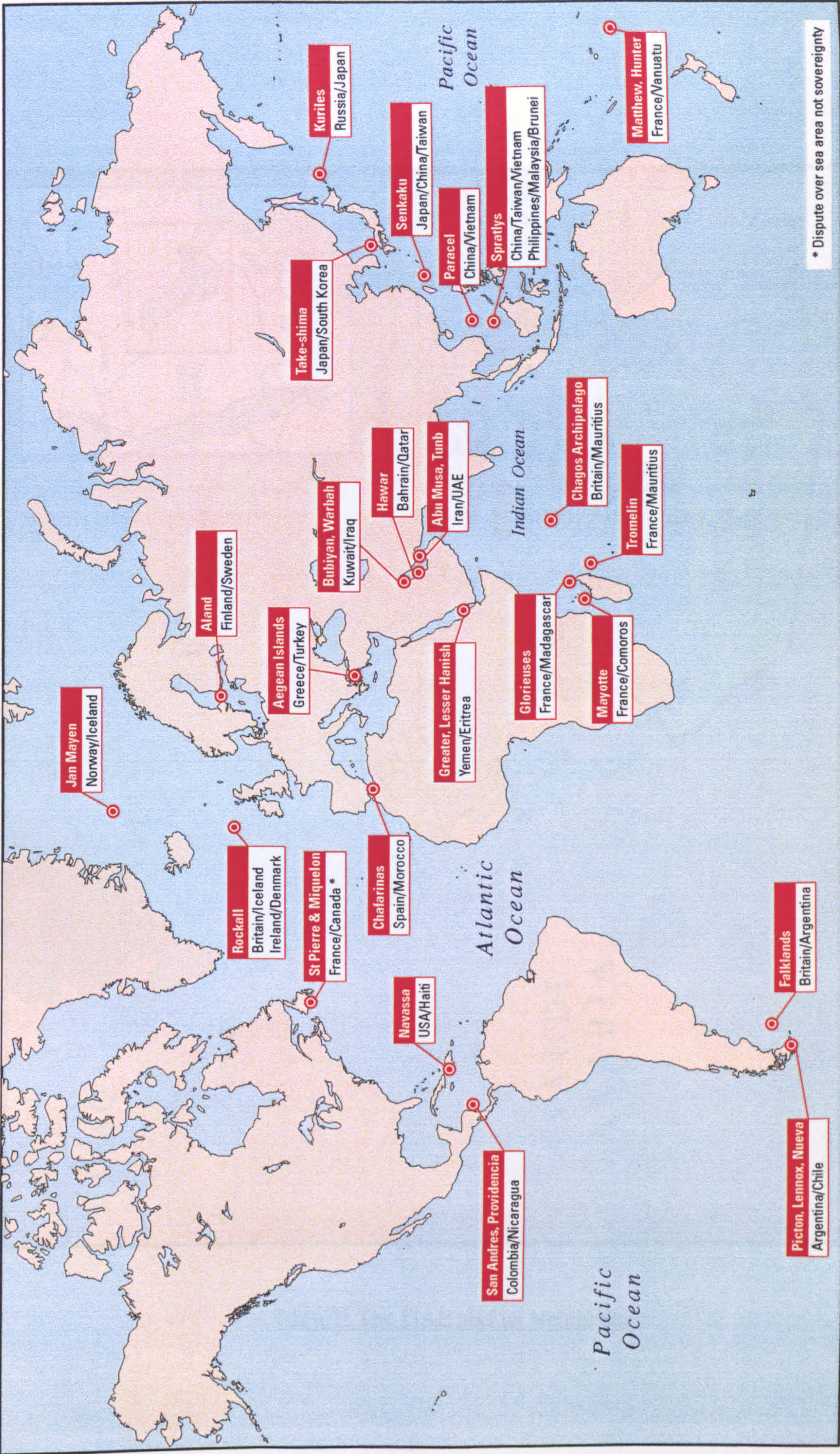
(c) My Government fears that the Islamic Republic of Iran would exploit the deletion of the item in question from the list of matters of which the Council is seized in order to perpetuate its occupation of the three islands and would use it as a pretext to evade the application of the principle of the inadmissibility of the acquisition of territory by force.

In the light of the foregoing, my Government is prompted by the hope that the Security Council will retain the item relating to the question of the three islands belonging to the United Arab Emirates in the list of matters of which it is seized. Should the Council decide to consider the retention of the item in the list of matters of which it is seized or its deletion therefrom at some time in the future, my Government requests the Council to inform it accordingly and to allow it the opportunity to participate in the relevant discussion in the Council's formal meetings, given that the issue of the three islands concerns the sovereignty and territorial integrity of the United Arab Emirates.

My Government takes this opportunity to affirm the desire of the United Arab Emirates for security and stability in the Arabian Gulf and to confirm its commitment to the provisions of the Charter of the United Nations and the principles of international law.

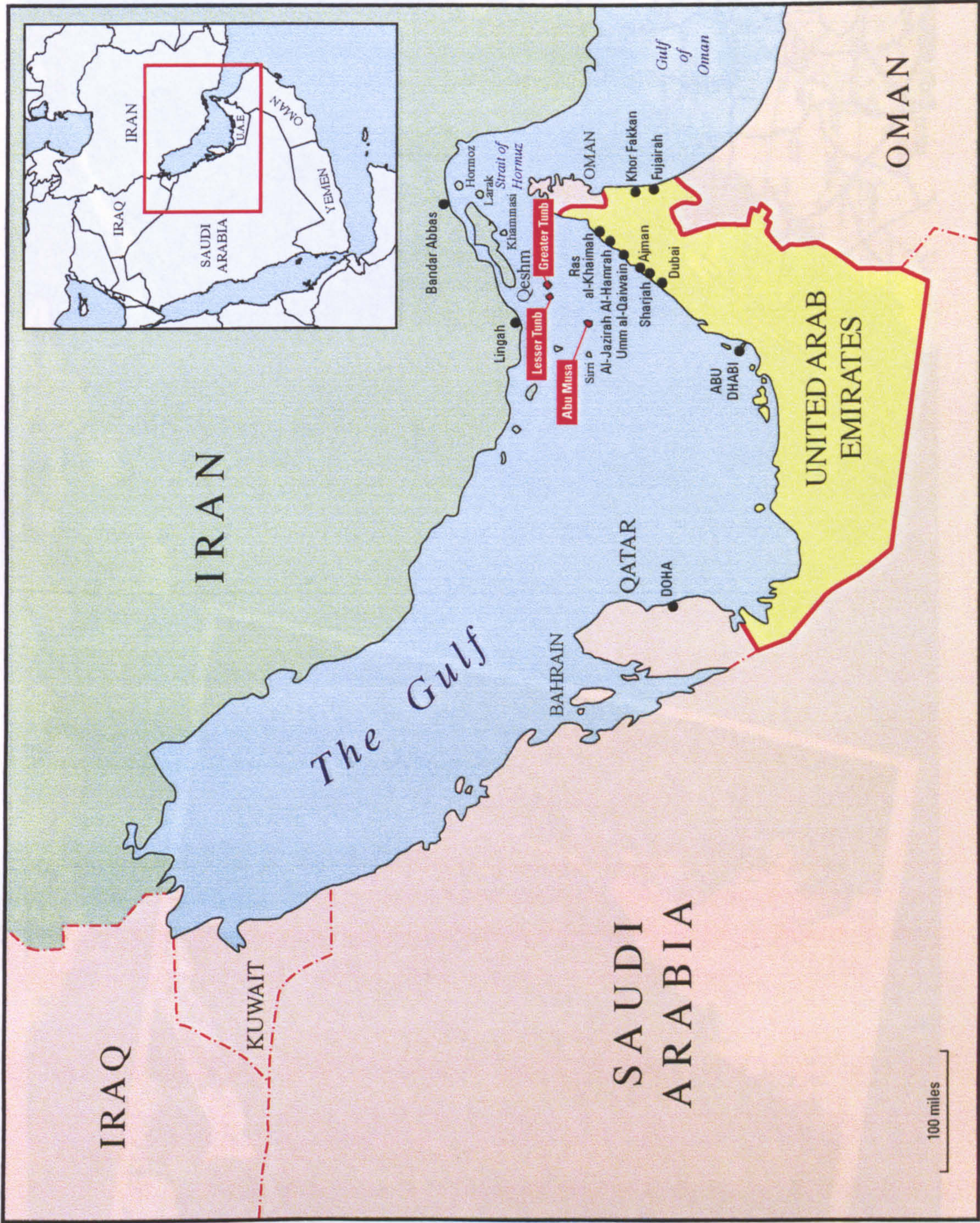
I should be grateful if you would have this letter circulated as a document of the Security Council.

(Signed) Mohammad J. SAMHAN
Ambassador
Permanent Representative

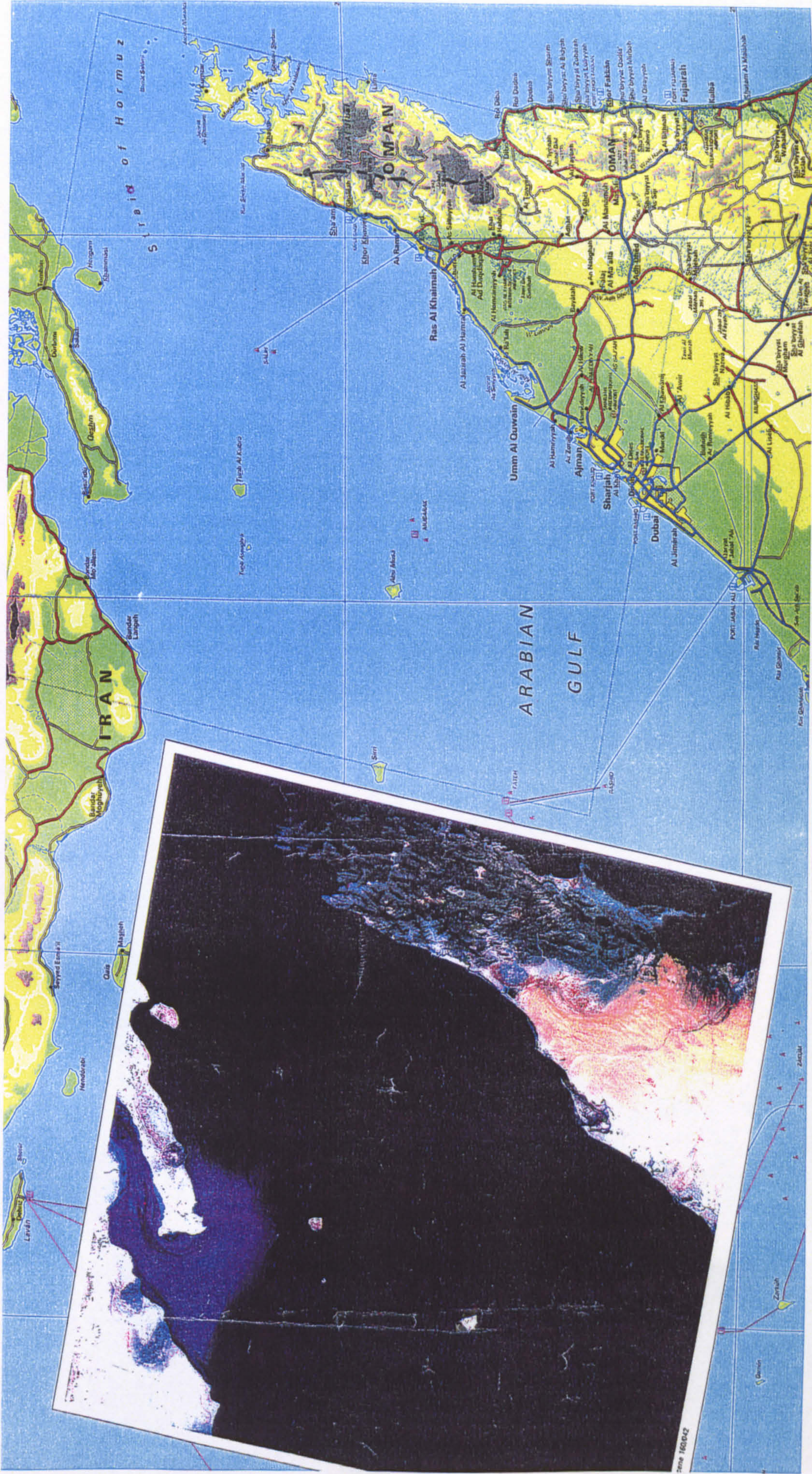


Map 1: Islands of Conflict in the World

Source: Independent Newspaper, 26 July 1992



Map 2: The UAE and its Neighbour



Map 3: The Three Disputed Islands, Abu Musa, Greater and Lesser Tunbs

Source: *National Atlas of the UAE*, UAE: The University of the UAE Press, (1993)